THE GOVERNMENT OF FRANCE

JOSEPH-BARTHÉLEMY

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BY

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TRANSLATOR'S NOTE

THIS work was originally published in Paris in 1919. Since that time changes in the French constitution have made certain passages obsolete and M. Barthélemy has supplied me with new matter in order to bring the book up-to-date.

The most important change is to be found in Chapter IV., "The Chamber of Deputies" (pp. 56-61 in the French edition). This is due to the Law of July 12th, 1919, which altered the method of electing deputies from that of the single voting system, or "*scrutin uninominal*," to that of the multiple voting system, or "*scrutin de liste.*"

The restoration of Alsace and Lorraine affects the numbers of both the Chamber of Deputies and the Senate.

The actual state of groups in the Chamber is given in place of that existing in 1919. This involves changes in pp. 43-45 inclusive, of the French edition.

I am deeply indebted to my friend, Mr. W. H. Carter, B.A., of St. John's College, Oxford, for assistance in reading the proofs.

J.B.M.

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INTRODUCTION

THE GENERAL CHARACTER OF FRENCH INSTITUTIONS

FRENCH institutions of to-day, considered as a whole, form a composite building on which every new régime for the last hundred years has left its mark. The foundation is provided by the social, legal, judicial and administrative system of the Napoleonic Empire, which was crowned in 1875 by the corner-stone of parliamentary democracy. Many other features have been left by other régimes ; thus France owes her general principles of common law and her administrative divisions to the Revolution. It is probably an exaggeration to say that the Republic has preserved intact the imperial organisation. The Napoleonic framework has been retained, but the material structure has been changed. Every new form of government since the July Monarchy has infused its own breath of liberty into the institutions created by Napoleon ; the councils which in Napoleon's hands were instruments of central authority, have become, without change of title, elective and representative bodies of the people concerned ; in place of the mere right of consultation they have received a power of decision. In a word, decentralisation has taken place within the framework of the imperial centralisation.

Nearly all the forms of government which have succeeded each other in France have left behind them, as it were, certain fertile alluvial deposits. The Restoration bequeathed to her parliamentary government and the financial principles of a free country. The July Monarchy

defined, developed, and consolidated these principles, and drew up the great laws still in force, dealing with connecting roads, expropriation, etc. The Republic of 1846 inaugurated a work of unification, and definitely established universal suffrage. The Second Empire is responsible for the election machinery (laid down in the dictatorial decrees of the Prince President on February 2nd, 1852), the liberty of coalitions, and the distribution of authority between prefect and minister. The National Assembly gave France her departmental organisation (law of August 10th, 1871), and, most important of all, her political organisation.

French institutions in consequence do not present the appearance of a fine, foresquare building, whose parts are all harmoniously arranged according to a preconceived plan. Rather they resemble an old family mansion, in which each generation has made some improvement, introduced some new feature, left its mark. Here and there inconveniences are bound to result, apparent contradictions, calculated to irritate theorists in love with an absolute logic. But granted that the building has its defects, it has also very real advantages. Its venerable timbers have stood proof against time and weather. It has been steadily adapted, according to the lessons of experience, to the needs and to the essentially reasonable and moderate temper of the French people.

Chapter I

THE CONSTITUTION

Every Frenchman is subject to a triple administration: the general administration of the State, that of the Department and that of the Commune. The Constitution is the fundamental document which determines the existence and attributes of the principal organs of the State—those who are charged with its government—such as the President of the Republic, the ministers and Parliament.

The French Constitution of to-day is not contained in a single document, but in five separate laws passed during the year 1875 by the National Assembly.

On September 4th, 1870, following the disaster of Sedan, the imperial régime crumpled up. A provisional government, composed of the deputies of Paris, assumed the direction of the destinies of France, under the title of the "Government of National Defence." Its first step, for it was only a government in fact, was to invite the country to elect an assembly which could give it regular institutions; but, since a large part of the country was occupied by German troops, the elections only took place after the signing of the armistice with the German Commander, the day after the capitulation of Paris. The armistice agreement stipulated that an Assembly should be nominated for the purpose of settling conditions of peace with Germany. It was this *National Assembly* which drew up the present Constitution.

It took nearly four years over the task: elected on February 8th, 1871, it sat for the last time on December 31st, 1875. Its delay was not due to any desire on its part

to finish its work with great care so as to bequeath perfect institutions to France, but to its inability to arrive at a decision upon general principles. Elected "in an unhappy hour," this Assembly was for the most part conservative and monarchist. Its dearest wish was, therefore, to establish a monarchy; but the entanglements of past history were too much for it; there was only one throne, and there were three who wished to occupy it. The least redoubtable was the Prince Imperial, son of Napoleon III. The struggle therefore, was between the descendants of French kings; the *Comte de Chambord*, grandson of Charles X., representing the elder and legitimate Bourbon line; and the *Comte de Paris*, grandson of Louis-Philippe, representing the Orleans line, which the revolution of July had advanced to the throne. In 1873 a fusion occurred. The older line being about to die out in the person of the *Comte de Chambord*, the Orleanists decided to withdraw their opposition, since the princes of Orleans were the legitimate descendants of the last Bourbon. This compromise proved useless, the Comte de Chambord imposing conditions on his acceptation of the throne which the new France could not accept, and which were typified by the substitution of the old lilies for the tricolour. Wearied by so many negotiations and intrigues, the National Assembly resigned itself unwillingly to the establishment of a republic. The Wallon amendment which assumed indirectly the republican form, since it determined the present method of appointing the President of the Republic, was passed on January 30th, 1875, by a majority of one.

The nature of the French Constitution cannot be understood if these essential facts are overlooked, namely, that the conservative Right, unable to establish their ideal government, would only accept a republic that kept as closely as possible to the monarchical form. They set up a presidential chair which could with little difficulty be

transformed into a throne, on the day when " Providence should brush aside the obstacle " to a restoration, that is to say, when Chambord and his unwavering obstinacy should alike be laid to rest. The Constitution of the Republic is copied from that of the July Monarchy. It is a Constitution based upon the hope of a monarchy.

On the other hand, all republicans, of every shade of feeling, laid aside for the moment their particular beliefs with regard to politics and society, in order to consecrate under whatever conditions the *fact* of the Republic. They concentrated all their efforts upon establishing the sacred word, waiting until later to organise the thing itself. Both sides, therefore, considered that they were employed upon a purely temporary work. Yet of the nine constitutions which France has experienced since 1789, without counting the modifications which they have undergone, this Constitution, fashioned with such modest ambitions, has lasted the longest.

The 1875 Constitution is the shortest of all documents of its kind, comprising twenty-six articles strictly constitutional in character. This brevity is partly due to the fact that the Members of the Constituent Assembly having no liking for their work, included only what was absolutely essential. Moreover, since France had a long political experience, institutions could be defined in few words, while making a very wide appeal to precedent. An absolute lack of method betrays the lack of enthusiasm of the members for the drawing up of their work. They did not divide it into chapters ; they added no sub-headings, no table of contents. Even the subject matter is not arranged in any definite order. A rule is formulated when thought of, and any addition or corollary is announced later on when it happens to come to mind. There is no *dogmatism :* very different from the magniloquent constitutions of the revolutionaries, or even from the 1848 Constitution, that of

1875 affirms no ideal and proclaims no principle. The republican form itself is introduced timidly and indirectly by the second article of the law of February 25th, 1875: "The President of the Republic shall be elected . . ." The Constitution of 1875 is a hang-dog Constitution, "a Cinderella slipping noiselessly between the parties who despise her."

It differs also from the revolutionary constitutions by the absence of a spirit of simplification, that abstract logic which tends to produce so many evils in political science. The National Assembly, refusing to be persuaded by the famous fallacy, that the nation being one, it should be represented by one body, created that valuable instrument of deliberation—the Senate. Thus, broadly speaking, the French Constitution represents a great compromise between Republic and Monarchy, and the spirit of compromise can be seen in every detail, notably by the way in which the institutions and rules of a parliamentary régime and cabinet government were adapted for the first time to the Republic. For the first time the head of the republican state was declared irresponsible; it was only under constitutional monarchy that ministers had been declared politically responsible to the Chambers; now for the first time the head of the republican State received the right of dissolving the Chamber.

The compromise between the republican and monarchical tradition appears again in the regulation of sessions, in the division of powers between Parliament and the President of the Republic for the conclusion of treaties, etc.

The reproach levelled at the 1875 Constitution of being a monarchical one has been singularly abused in political controversies. In every way it has ceased to be just: in addition to the formal revision of 1884, the Constitution has undergone in the course of time a fundamental revision which

has had the result not only of effacing the Presidency of the Republic, but of bringing into prominence the people's Chamber.

All parties were agreed that the Constitution was to be a provisional construction. It was therefore essential that it could be easily modified. The National Assembly was here faced with two contrary traditions: the revolutionary tradition of a fixed constitution, unable to be modified except with great difficulty and by a special authority; and the monarchical tradition of a pliable constitution capable of being modified by the normal legislative power, in the form of ordinary laws. In accordance with the tendencies which we have already mentioned, the National Assembly again adopted a solution which was a compromise between the two. The provisions which were definitely made part of the Constitution, can, it is true, be modified by the ordinary Chambers—a remnant of the monarchical tradition, but only by following a special procedure—a concession to the republican tradition.

Of the five laws of 1875 relative to the organisation of public executive power, and which are known generally as the 1875 Constitution, three only (the laws of February 25th, February 24th, and July 16th) received a constitutional form. The other two (the law of August 2nd, concerning the election of senators, and that of November 30th, concerning the election of deputies) were described as organic laws, and subject to the same conditions as ordinary laws. Moreover, the law of February 24th was largely separated from the Constitution in 1884. Consequently, it would be as easy to alter measures seemingly of the highest importance as it would be to alter highway acts; an ordinary law could determine that senators should be elected by universal suffrage, and that the deputies' term of office should be increased from four years to six or to eight.

The truly constitutional measures do form what is called a fixed constitution, and can only be modified by following the revision procedure. This comprises two stages: the vote for revision, and the revision itself. Before commencing the process of revision each Chamber must declare that there is need for it, and this declaration must be the object of two separate motions, so that the vote of one Chamber does not officially bring the question before the other. The vote, passed by the two Chambers, in favour of revision, automatically convokes the National Assembly, which is simply the union of deputies and senators in a single body, whose committee is that of the Senate. Its meetings are held at Versailles, theoretically because business so weighty as that of the reform of the fundamental contract must be accomplished in retreat from the turbulence of Paris; but as a matter of fact, because there is a room at Versailles specially arranged to seat the nine hundred members of Parliament. According to the principle of limited revision, the National Assembly can only modify the constitutional measures mentioned in the vote of revision; this principle is necessary in order to safeguard the independence and even the existence of the Senate; indeed, at Versailles the three hundred senators form but a feeble minority in the presence of the six hundred deputies. The senators, therefore, must have no surprise sprung upon them, and they only consent to go to the National Assembly on points concerning which they have given their formal assent. With the exception of its committee, appointed by the constitution, and which is that of the Senate, the National Assembly regulates its own procedure and determines the date of its meetings, and the duration of its existence.

This procedure has twice been put into practice, each time following the advent of a republican majority. In 1879 the seat of public executive authority was transferred to Paris. This reform, though obviously for the convenience

of members and ministers, was put forward as an avowal of confidence towards the Parisian mob (Revision of June 21st, and law of July 22nd, 1879). The second revision, that of 1884 (constitutional law of August 14th, ordinary law of December 2nd) had a greater importance; it aimed at making the Senate more democratic by abolishing life membership in the Senate, and by extending the bounds of the college responsible for electing the one remaining class of Senators. At the same time the National Assembly added a statute to the Constitution whose legal effect is disputed, but whose moral and political value is evident: "The republican form of government cannot be the object of revision." The provisional character of the Republic of 1875 was thus removed.

The people have no place in this procedure: the Chambers can modify the fundamental Constitution of France without making any previous representation to the electors, without even putting forward the question of revision at the time of the elections. The procedure of revising the Constitution is particularly solemn: the necessity of "going to Versailles" calls the attention of Parliament to the serious nature of the business in hand. But, as a matter of fact, obstacles to a remoulding of the Constitution are scarcely greater than to legislative reform. Once the agreement of both Chambers to the principle has been obtained, revision of the Constitution proceeds even more simply than the altering of an ordinary law, since it is carried out by a single assembly, which does away with the long deliberations in the Senate, and those endless goings to and fro from one chamber to another, often resulting from comparatively trivial disagreements.

Nevertheless, this system of revision is in many ways conservative of the existing state of things, especially in regard to the Assemblies' prerogatives. It is not too much to hope that the Senate and the Chamber will correct their

own vices, although they are the last to see them! It is probable that a thorough reform of institutions would only be rendered possible by means of a Constituent Assembly, specially elected for that purpose, and convoked, when a consensus of public opinion demanded it.

There is, however, no sanction to compel the Chambers to respect the Constitution. The system of a fixed Constitution lays down: (1) that the Chambers can only alter the Constitution following the special procedure; and (2) that the Chambers cannot make any law in contradiction to the rules of the Constitution. But if the Chambers altered or violated the Constitution by an ordinary law, that law would be no less valid, and would in fact be legally binding upon officials and citizens. Accordingly, a growing mass of public opinion is demanding the establishment of a sanction for the foundations of the French political organisation. First of all it is asked that the French Constitution should be something more than a code of procedure, that consequently it should be preceded by a Declaration of Rights; and secondly, that the principles thus declared should be recognised by the annulment of all laws contrary to them, such nullification to be pronounced either by a special constitutional authority, modelled, for instance, on Franklin's Body of Overseers, on the constituent jury, of Siéyès, or on the conservative Senate of the year VIII., or by the Court of Cassation, invested for this purpose with powers similar to those which are granted to the Supreme Court of the United States.

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The two great classics on French Constitutional Law are: Esmin, *Eléments de droit constitutionnel*, 6th edn., ed. by Joseph-Barthélemy, 1914; and Duguit, *Traité de droit constitutionnel*, 2 vols., 1911, or Manuel, 3rd edn, 1918. Very full bibliographies will be found in these works. There are

abundant works of criticism on the constitution. Note especially: Jules Roche, *Quand serons-nous en République?*; Georges Lachapelle, *L'Oeuvre de demain*, 1917; Edmond Villey, *Les vices de la constitution francaise*, 1919; Mazel, *La nouvelle cité*, 1918; Probus, *La plus grande France*, 1917; Maxime Leroy, *Pour gouverner*, 1918; Lysis, *L'erreur française, Vers la démocratie nouvelle* (2 vols. of the *Bibliotèque Politique et Economique*, Payot, Paris); *Demain*; Henri Leyret, *Le gouvernement et le parlement*, 1918.

Chapter II

THE PRINCIPLE OF DEMOCRACY

The French government is democratic in form ; universal suffrage is actually the sole source of power. The people choose the deputies ; they also elect the members of the local Government bodies, comprising the general councils of the Departments, the district (arrondissement) councils, and town councils. The members of these councils, together with the deputies, elect the senators. The senators and deputies combined appoint the President of the Republic, and he in his turn appoints ministers, and directly or indirectly all officials. The principle of democracy is also shown in the permanent control, exercised by men thus elected by universal suffrage, on all grades of public life. Finally, if the Chamber of Deputies appears to be in disagreement with the body of electors, the latter can be directly consulted by the President of the Republic, by means of his right of dissolution.

The people's activity naturally confines itself to electing a certain number from among themselves to legislate, govern or administer in their name. The people are never called upon to take decisions themselves, or even to approve the decisions of the men they have elected, so that French democracy is purely representative.

French constitutional law does not distinguish between the political and administrative electorate. The same electors, registered on the same list, elect the deputies and also the members of the local administration councils.

The Right to Vote

Universal suffrage is the one general electoral principle which the National Assembly included in the Constitution (Article 1, Law of February, 25th, 1875); and provided this principle be observed, the legislator may draft laws concerning the suffrage and conduct of elections as he pleases.

The word "universal" when applied to politics, has only a relative meaning. It denotes merely that the vote is not confined to a limited and chosen few, marked out by birth, fortune or ability. But let it not be thought that everybody votes; amid the mass of the population, even under systems of so-called universal suffrage, the electorate still forms a chosen body, granted a large one, and selected according to a low standard of competence.

Loyalty to the State is required, but the laws on this question are very lax; they only exact French *nationality* by birth or naturalisation; so that the very act of naturalisation immediately converts a foreigner into an elector.

Men only have the right to vote. This sex qualification, which obtains in Latin countries, is generally put forward as an intellectual and moral one, founded on the assumed superiority of the male sex.

Since 1848, the age for voters has been fixed at 21. The question has been asked whether a man, at this age, is sufficiently experienced for the delicate business of electing men to govern the state. At any rate, under a system of compulsory military service, which withholds the right to vote from soldiers, it is certainly absurd to give the vote to a small minority from 21 to 23 or 24 years of age, who are excused from that service, which is at once a great privilege and a heavy burden.

A certain standard of intelligence is required. The polling-booths are closed to individuals totally deprived of reason. It is important to note by what practical

measures this rule is observed. The right to vote is only denied to certified persons, *i.e.*, to persons, who, quite apart from any question of registration on the electoral list, have been deprived by a decision of the civil tribunal of the right of looking after their *patrimoine*, or inherited property. This decision is usually made at the instigation of near relatives, theoretically to protect the madman against himself, but actually to preserve an inheritance of which they have hopes themselves. If, however, the family lacks this spur of self-interest to engage in the worries and expense of a legal procedure, the individual who, according to the terms of the Code "is in a habitual state of imbecility, of madness or of frenzy," is not certified, and consequently still enjoys the right to vote. If the uncertified lunatic is confined in a special home for lunatics, the *exercise* of this right is *suspended*, during the legal duration of his confinement, but is resumed directly he has been legally set at liberty, if for instance, he has ceased to be dangerous, or his family can no longer pay the fees. In consequence, free uncertified lunatics retain their rights of citizenship to the full. It sometimes happens, especially in country districts, that town clerks refrain from registering on the list idiots generally recognised as such, or the notoriously simple-witted; but this practice is very properly censured by the Court of Cassation. French legislation distrusts estimates of the intellectual ability of citizens, when such estimates are made with a direct bearing upon registration on the electoral list, and are consequently exposed to party passions. It should be added that the simply mentally deficient, gathered together in homes, enjoy full political rights, which they exercise under the surveillance and often with the material help of their guardians.

There is also a standard of conduct, but it is no more rigorous than that of intelligence. Men who have

committed certain offences against society are excluded from taking any part in the direction of society either in perpetuity or for a period of five years: this rule includes those who have served criminal or correctional sentences (decree of February 2nd, 1852), bankrupt tradesmen, ministerial functionaries dismissed for gross incompetence. Democracy has, however, a tendency to relax from time to time the severity of these standards of conduct. Bankruptcy legislation is gradually becoming more lenient. A judicial liquidation for unfortunate but honest tradesmen entails bankruptcy without forfeiture; and the period of deprivation of the vote for bankrupts has been limited to three years. These purely negative standards of intelligence and conduct are absolutely necessary; but they have been brought to such an irreducible minimum, that they hardly affect the character of the electorate which is called upon to choose those who are to govern, and which comprises, broadly speaking, all male citizens of age.

The Vote

In order that male citizens of age should exercise the right which is thus recognised as theirs in principle, it is only necessary that they should be registered on the electoral list, always provided that they are not under military service or confined in a lunatic asylum.

A man cannot vote unless he is registered on the electoral list of a Commune. Moreover, he cannot choose the Commune; he can only be registered in the place where he lives, either as a permanent resident, as one of six months' standing, or as a ratepayer. The voter must exercise his right where he is known, so that his identity may be more easily assured.

Since the law of April 5th, 1884, there has been but a single list, which is used for both political and municipal elections.

This electoral list has a continuous existence, the object being to avoid mistakes and frauds, which would necessarily occur if a list had to be hastily drawn up in view of an approaching election.

Every year from January 1st to March 31st, the list is revised by an administrative commission, consisting of the mayor, one delegate of the Prefect, and one delegate of the town council. Appeals from the decisions of this body can be made to the municipal commission, which differs from the first only by the addition of two delegates from the municipal council. The decisions of this commission can in their turn be referred to a justice of the peace, whose decisions are controlled, from the point of view of legality, by the Court of Cassation. All such decisions and appeals are public. Any citizen can appeal, even though not personally interested, and can do so easily—simply by lodging a notification at the town hall or at the office of the justice of the peace. All appeals are free of cost.

The most convenient proof of registration is the electoral card granted by the municipality; but the elector is free to prove his registration and identity by any means at the polling booth. Men in certain situations are excluded. Lunatics during the lawful period of their confinement are deprived of their right to vote.

Soldiers are registered on the electoral list, but they cannot take part in elections until the day after they have left the service, since French legislation has decided that the exercise of political rights by men serving with the colours is incompatible with the requirements of discipline.

The Ballot

Voting is direct in that the electors choose their candidates themselves. It would be indirect if they confined themselves to appointing a certain number among them with the task of appointing members of councils.

It is optional, in that each elector is free to vote or not as he chooses. A great number of citizens unfortunately abuse this power. There are no very illuminating statistics on this point, since public announcements give the number of persons who have not voted without distinguishing between those who have neglected to do so and those who were prevented by some legitimate cause, such as military service, illness, or absence from home. In some departments non-voters represent forty per cent. of the electorate. There is a general belief that there are a great many defaulters, that they are moderate electors whose participation in the ballot is desirable, and should be enforced by the institution of compulsory voting. For while voting remains optional, it is made easy, by the choice of places, days and times most convenient for the mass of the public. This removes any excuse for abstaining. Polling is facilitated for the electorate by having at least one polling booth in each commune, and more if necessary : and it takes place on Sunday from eight in the morning to six at night.

Voting must always be in person ; there is no other means of exercising the right of voting than by personally placing one's voting paper in the ballot box. There is a movement on foot to allow voting by post, which would put an end to unavoidable abstention in the case of sick persons, transport workers, casual labourers employed away from home, and commercial travellers.

Voting is secret. The laws of July 29th, 1913, and March 31st, 1914, introduced two new arrangements to this end : the envelope and the separate compartment. A small white voting paper is used, and must not bear any personal mark; the voter receives an official envelope in which he is to place his form " in that part of the room arranged to prevent any overlooking whilst he is placing his form in the envelope." He himself places this envelope containing the voting paper in the ballot box.

Measures are taken that the ballot shall be fair. The voting papers are received under the control of the public by a committee composed theoretically of the two oldest and the two youngest voters in the room at the moment of commencing the ballot, with the Mayor or his delegate as chairman: these five people themselves elect a secretary. For senatorial elections the chairmanship devolves upon the President of the Civil Tribunal of the chief town.

The voting papers must be counted in the presence of the public, by tellers appointed by the candidates, and seated at little tables round which the voters can pass. For elections to the Chamber of Deputies the results of a large number of polling stations have to be collected before announcing the final result; this is the work of a so-called censor's commission, composed in order to avoid any administrative pressure, of the four senior general councillors and the President of the Tribunal.

The machinery is not yet perfect, and in this connection France has still much to learn from Belgian legislation; nevertheless, considerable progress has been made upon the regulations left by the Second Empire.

The regulation of actual polling procedure is, of course, not complete without an attempt to repress corruption of the electorate. The law of March 30th, 1914, severely punishes all acts, violence, threats, bribes, or promises made with the view of influencing electors' votes. The law of March 20th, 1914, is also largely concerned with the improvement of elections, by limiting electoral billposting. For several years it was the custom to fight the electoral battle by means of bills, each candidate trying to swamp the declarations of his adversary in floods of paper. Henceforth, electoral bills can only be posted in a few places, five in communes of 5,000 electors, ten in larger communes, with an increase of one bill for every 3,000 electors. A limit has thus been set to the power of wealthy candidates.

Finally, elections are decided by a majority. This statement comprises three ideas :

(1) It is a majority vote, in that everything is won by the majority of electors. The law of July 12th, 1919, has, however, introduced a system of more or less proportional representation in the election of Deputies.

(1) The election must always take place even if there is only one candidate. This is not so in England and Spain.

(3) If no candidate secures a deciding number of votes at the first poll, a second poll must take place, which is called the *ballotage*. This is a traditional institution of French common law, which is entirely unknown in England.

To be elected at the first poll, a candidate must secure an absolute majority, i.e., one more than half the total number of votes polled. Moreover, the law exacts that this number shall at least be equal to one quarter of the total number of eligible voters. At the second poll an ordinary majority (*pluralité*) suffices, and the candidate who has obtained the greatest number of votes is declared elected. This rule of an ordinary majority, or plurality, applies to elections for administrative councils, both of the town and district (arrondisement), and for the presidency of elective bodies ; but for the election of senators, as well as for the election of mayors by the municipal council, an absolute majority is necessary for the first two polls, an ordinary majority only being permissible at the third. Finally, in the case of the President of the Republic, he can only be elected by Congress (the Chamber and Senate combined), by an absolute majority of votes, i.e., the election is void until after an indefinite number of polls a candidate has obtained one more than half the total number of votes.

The institution of *ballotage*, at any rate for elections decided directly by universal suffrage, has been very severely criticised. It gives rise to transactions on the part of candidates which are often very derogatory to the electors; the commonest method is to stand at the first poll in order to obtain some ministerial favour or other advantage at the price of retiring at the second. A system of proportional representation, which is to be desired, and which will probably come to be used for all elections, will bring about, among other advantages, the disappearance of *ballotage*.

The Judicial Control of Elections

It is characteristic of French common law that the judicial control of elections should be removed from the sphere of judicial authority.

Actions concerning the validity of elections for local councils are judged by the administrative tribunals. The Prefect's council, from which appeal is allowed to the State Council, deals with municipal elections and elections for the district council. The State Council deals with actions concerning elections for the general council, "in first and last instance."

The elections of members of parliament are subject to the system known as the *verification of powers*, each Chamber dealing with actions concerning the elections of its own members.

Actions dealing with local elections do not give rise to any serious complaint; they are dealt with, in large measure by the State Council, and the impartiality of this supreme court is beyond criticism. Concerning the verification of powers the case is different; it tends at times to transform itself into a kind of *ballotage*, such as takes place in clubs where the more powerful party admits its friends and

rejects its enemies. It is to be hoped that this serious duty will be transferred to a high and essentially judicial authority such as the Court of Cassation.

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Chapter III

PARLIAMENT

Parliament is a single authority composed of two assemblies. In the ordinary way each of these assemblies deliberates apart, the Senate at the *Palais de Luxembourg*, the Chamber of Deputies at the *Palais Bourbon ;* and the will of Parliament is expressed by the decisions of these two Chambers combined. It has already been noted that when revision of the Constitution is to be undertaken these two Chambers unite to form a single deliberative body, which is known as the National Assembly, and in which every member has one vote.

The two Chambers also unite to elect the President of the Republic ; they then form Congress, which is simply an electoral college, and consequently cannot discuss, deliberate, decide, or conduct any other business than that of the election for which it has been summoned. Finally, the Senate does on occasion act as a criminal court for political cases. This is dealt with later in greater detail in Chapter X.

With regard to the way in which members of Parliament are nominated and elected, it is remarkable that the constitution takes no serious precaution to ensure the competence of successful candidates. Excepting for the age limit (twenty-five for the Chamber, forty for the Senate), one may say it is hardly more difficult to be a candidate than an elector. The candidate must first of all possess the right to vote, but he need not be inscribed on any list. On two occasions in French history there have been examples

of men who neglected to have themselves inscribed on the electoral list, and who only began to take an interest in politics on the day they became candidates.

No special condition of intellectual capacity is prescribed, and curiously enough, the spendthrift or the feeble-minded person who has been temporarily suspended or deprived of his vote by a legal body is yet eligible for Parliament, although ineligible for the municipal council. However, both the patriotic and moral standard are slightly higher for the candidate than for the ordinary elector.

Thus a foreigner becomes an elector as soon as he is naturalised, but cannot become a candidate until after ten years. Again, a citizen who has escaped military service but who has been successful in retaining his electoral rights (either because his appeal was justified, or because he was granted an amnesty), cannot be elected to Parliament.

There is also a guarantee of morality.

A man who has suffered judicial liquidation (for instance an honest tradesman who cannot meet his liabilities), although still an elector, cannot be a candidate ; a bankrupt, however (a tradesman guilty of negligence or imprudence), only recovers his right to vote after three years, and cannot become a candidate without an official discharge.

These are all the personal conditions with which a candidate must comply, and they are few enough. The other conditious of eligibility do not concern the personal qualities of the candidate. They are inspired (1) by the wish to defend the Republic ; members of families who have reigned in France are ineligible ; (2) by the exigencies of military discipline : while inscribed on the electoral list, soldiers cannot stand as candidates ; (3) by anxiety to avoid any illicit influence upon electors. This last condition of eligibility (*a*) applies only to officials ; (*b*) and of them, only to those who can exercise an influence upon electors, for instance, prefects ; (*c*) only applies to them in the

district where that influence can be exerted ; and (*d*) only during the time in which that influence can be exerted, which the law estimates as until six months after the expiration of office.

The Constitution takes precautions to ensure the independence of members of Parliament in various ways.

The principle of democracy exacts that the legislative mandate shall not be a luxury reserved for the well-to-do, and therefore in order that it may be accessible to all it must be a salaried position ; but it is not fitting that the salary should be provided by individuals or particular organisations, such as trade unions, since they would not respect the candidate's independence. The salary must, therefore, come from public funds. This rule has always been observed in France, except under the copyhold system, which lasted from 1814 to 1848, when political life was certainly the privilege of wealth. The salary has risen since 1906 to 15,000 francs, a fairly large sum in comparison with the salaries of French officials, but meagre if one considers the general cost of living, and the expenses inseparable from political life. Members of Parliament also enjoy certain material advantages, such as free passes on the railways.

They are in the second place made independent with regard to the government, which is indeed controlled by the Chambers. Such a control, it was thought, would not be sincere if exercised by bodies of officials, and so in principle all public offices dependent on State funds are declared *incompatible* with the legislative mandate. An official who is successful in the election loses his office completely, he does not merely vacate it for a period ; and conversely, a Member of Parliament who accepts office loses his seat. A very small number of officials is excepted, either because their office is very important, thus securing their independence, or because its sphere of influence is so large that their presence in the Chamber is desirable ; these

officials are the ministers and under-secretaries of State, the Prefect of the Seine, and the Prefect of Police, First Presidents and Procurator-Generals of the three Courts sitting at Paris, ambassadors, and titular professors of higher education.

This rule is not without its inconveniences, since it may result in keeping out of the Chamber men whose position argues a certain capacity ; but in practice it is evaded by an abuse of the measure which provided that offices might be held jointly with the legislative mandate provided they were only conferred for six months. The position of Governor of the Colonies is incompatible, but by temporary delegations of power which were constantly renewed, Deputy Augagneur governed Madagascar ; indeed, during 1919 Deputy Sarraut was governing French Indo-China, and the Deputy Jonnart, Algeria. The Deputy who accepts an office, even a compatible one, is expected to hand in his resignation, subject to his appearing before his constituency, but this rule does not apply when the office is given only temporarily. In this way Deputy Delcassé acted for two years as French Ambassador at Petrograd, and in 1918 Deputy Thierry became Ambassador at Madrid. Moreover, such quasi vice-royalties offered by the government of great colonies are sufficiently tempting for a member to sacrifice his seat for them, and the government uses them both to reward services, and to get rid of troublesome opposition.

Finally, a Member of Parliament is independent with regard to the law. It is a tradition of representative government that Members of Parliament cannot be proceeded against in the criminal or civil courts, either by the government, acting as keeper of the public peace, or by individuals, for any acts committed in the exercise of their office. Thus a member cannot be arraigned before the criminal courts for an offence which he has committed by a

speech in the Chamber, or in a written report, such as exciting the military to revolt, or a justification of criminal actions; and if, under the same conditions, he utters the most violent calumnies, the most baseless libels against a particular individual or society, the victim will still not be allowed to sue him for damages. This principle is usually justified by saying that a member must be able to say without fear what he believes to be true, but it would be vain to deny that this privilege covers certain abuses; perhaps a compromise could be arrived at by which members would be held responsible for grave errors and indiscretions too serious to be excused.

Members also possess a privilege which applies to faults committed apart from their office, but only concerns criminal proceedings; namely, that during sessions, a member cannot be proceeded against on a criminal charge (except in the ordinary police court) without the consent of his Chamber. It was feared that individuals for political motives, or the government in order to discredit a member and even make him lose his seat, might start groundless actions against him. Here again, perhaps, one has gone too far. It would be better first to guarantee the ordinary citizens against arbitrary proceedings and arrests which would be to the profit of Members of Parliament, and then, since the latter are by their position particularly exposed to the unjust attacks of individuals and of the government, to give each Chamber the right of putting a stop when it thought fit to any proceedings against or imprisonment of any one of its members.

We have now to consider the actual method by which Parliament is elected.

One of the most frequent dogmas to be met with in anti-democratic literature is that democracy rushes to mediocrity "like a donkey to hay." Universal suffrage, it was said, would remove from the lists those methodical and

able men who prove the most honourable, sincere and efficient citizens. The reproach when applied purely to the method of election is not without foundation, but directed against universal suffrage it becomes singularly unjust; for from the point of view of intelligence and honesty the Chambers defy comparison with the assemblies of any other countries, as well as with those of any former French *régime*. Doubtless, one result of universal suffrage has been that the labour party is represented, but this change in the parties has not resulted in lowering the level of intelligence and honesty in the Chambers, nor has it weakened the ardour of members and their devotion to public affairs.

The mistake arises from the fact that the widening of the suffrage, while not lessening the sum of talent and worth in the assemblies, has profoundly changed the outward appearance and general character of debates. Whatever the political divisions in the old Chambers, composed as they were of the landed gentry, their members always retained numerous points of contact, since while they might belong to entirely opposite parties, they still belonged to the same social "world." The introduction of universal suffrage brought as an inevitable result violent debates, and gave to all discussions the air of disputes; hence those scandalous sittings which, though significant of nothing more than surface agitation, yet tend to bring the system into disrepute.

Another cause of error arises in the external changes that have taken place in the style of parliamentary declamation. "It has taken off its coat, and appears in its shirt sleeves." Declamation is less polished, but demands more facts and details. Speeches, more rarely written are nevertheless more full of matter. The Restoration is always cited as the great period of parliamentary eloquence in France, but future historians on comparing that period with

that of the Third Republic will find, I think, no great disparity. They will recall the names of Gambetta, Ferry, Jules Simon, Challemel-Lacour, Floquet, Brisson, Goblet, Freycinet, Ribot, Clemenceau, Waldeck-Rousseau, Sembat, Millerand, Briand, Viviani, Bourgeois, Poincaré, Deschanel, Leygues, Barthou, Albert de Mun, Jaurès, . . ., and will find that this phalanx can compare with that of Guizot, Benjamin-Constant, de Serre, Martignac and Royer-Collard. The style of eloquence has indeed changed, but the sum of talents has remained the same.

Certain great debates, such as those on the disestablishment of the Church, or on trade unions, will remain among those which have brought renown to the French Chamber.

On the whole, democracy has caused a lowering of the social class from which the governing representatives are drawn. The great burgesses who formed a majority in the Assemblies of the Restoration and the July Monarchy, have become fewer in the Chambers of the Third Republic ; and they were more numerous before 1890 than since. Democracy tends to increase the material advantages of the legislative mandate, to make a career of it, with a salary equal to that of high officials, and to provide by way of promotion advancement to the Senate, and there an assured position. Thus a seat in Parliament has a growing attraction for the lower middle class and even for the upper working classes. It is from that class that the professional politicians come, and the "petty" ballot or ballot by arrondissement favoured their success.

On considering the various professions which provide members of Parliament, one finds that one of the characteristics of democratic Assemblies is the great number of doctors, who succeed in being elected thanks to a popularity honourably but easily acquired by giving more or less free treatment to poor patients.

The professions which seem to pave the way to public

life are indeed much the same under all free governments. The Chambers have naturally many representatives of journalism : M. Briand, M. Millerand and M. Clemenceau were chief editors of Parisian newspapers, and both M. Delcassé and M. Tardieu held a high place in journalism before entering Parliament. The Chambers also contain a certain number of landowners, manufacturers, and rich business men ; and there are a few labour members, but only in the Chamber of Deputies. The profession with a crushing majority is that of the Bar. This predominance of barristers in the public assemblies of France has existed almost as long as political liberty ; and it is surely in the highest degree logical to provide that laws should be made by lawyers, men who have given up their lives to the study of law, and whose profession gives them a first-hand knowledge of the difficulties which daily arise, not only in their interpretation but even in their application. Democracy makes no mistake in filling its assemblies with intellectuals. One of the best proofs of the common sense of a French peasant is that he does not want a peasant to represent him.

In the United States, in England and in Belgium, members of Parliament are divided into a few clearly defined parties according to fixed rules, supported by strong organisations in the country. In France it is quite different. Parliament is split up into a dozen or more groups, distinguished by almost imperceptible differences, and not corresponding to any real organisation in the electoral body. The names adopted by these groups increase the confusion by their want of clearness. Members commonly called " conservatives " demand a complete remoulding of the political institutions, while the " radicals " seem quite satisfied with the existing state of things. Certainly there is, as in all countries, a Right and a Left, typifying the two fundamental tendencies of man, conservation and progress, reason and

imagination, order and liberty, respect for the rights of the possessing classes, and concern for the needs of the masses, the maintenance of the family tradition and the freedom of individuals, etc. But to draw a boundary line in the Chamber by means of these landmarks would certainly be very difficult; perhaps the surest criterion would still be the opinion as to the place of the Church in the State, to religious liberty, to relations with the Holy See, and so on. Religious questions unknown in the United States have torn France for centuries.

The Chamber (and the Senate has followed its example) has had to divide itself officially into groups in order to be able to elect its committees according to the principle of proportional representation.

The following is the actual state of groups in the Chamber to-day, i.e. before the 1924 elections, beginning at the extreme Right and passing to the extreme Left.

(1) *The Independents* number twenty-seven members: they are catholics, monarchist, conservative. Their president is M. de Gailhard Baucel, and the most brilliant member of the group is Léon Daudet.

(2) *The Democratic and Republican Alliance* numbers 170 members; they form a group of moderate republicans and conservatives and are the largest group in the Chamber.

(3) *The Republicans of the Left* number fifty-six members, under the presidency of M. d'Iriart d'Etchepare.

(4) *The Republican and Democratic Left* number eighty-eight members.

(5) *The Group of Republican and Social Action* number forty-seven members, and are presided over by M. Joseph Barthélemy.

(6) *The Radical Socialists*, of eighty-two members.

(7) *The Republican Socialists*, of thirty-two members.

(8) *The Socialist Party*, fifty members ; and

(9) *The Communists*, seventy-three.

Finally, twenty-two members are unattached to any particular group, and so meet together to appoint their delegates for committees, etc.

Broadly speaking, one may say that there are two opposition groups—the Right, whose members however often vote for the Government, and which is too small to hope to overthrow a Government and take its place, and on the other extreme wing of the Chamber the Socialist party, which is strong enough to govern, but is not yet ready to do so. Between these two extremes, there is an enormous centre with a whole series of shades of opinion. There is consequently no effective opposition, and this fact has three important results.

(1) The President of the Republic has great liberty in the choice of ministers, since he receives no imperious indications from the Chamber. (2) Ministers are insecure, not knowing where to look for support. (3) There are numerous *ministries*, but they are generally of very much the same *ministers*.

This state of affairs gives the French political *régime* an altogether peculiar character, which revisions in the constitution would be powerless to modify.

Having examined briefly the conditions and status of its members, we have now to consider the actual working of Parliament.

The rule which determines the functioning of Parliament is very characteristic of the spirit of the French constitution : Parliament is not *permanent*. It cannot function just when it pleases, but only at definite periods of the year, known as sessions. The French Constitution has therefore abandoned the republican tradition which left Parliament entirely free;

but on the other hand, owing to the spirit of compromise which inspired all its work, it has not adopted the pure monarchic tradition, by which Parliament meets only when the head of the State is pleased to call it.

In the system laid down by the Constitution a distinction is drawn between ordinary and extraordinary sessions.

Every year on the second Tuesday in January, Parliament meets according to law for the ordinary session. But while Parliament is summoned by the authority of the Constitution itself, it can be dissolved by order of the government at any moment after the session has lasted five months. The Constitution, however, further considered that during these five months Parliament might become agitated, uproarious, threatening to the public peace; the government can, therefore, twice suspend the session for a maximum of one month at each time, allowing members of Parliament to depart to their constituencies and calm down. Adjournment does not shorten the effective duration of the ordinary session; if Parliament has been adjourned once, the session cannot end until six months after the second Tuesday in January, and if twice, until seven months after that date. Only once, however, has this important governmental prerogative been made use of, and that was by the Marechal de Mac-Mahon at the time of the Seize Mai.

Parliament can also be summoned for an extraordinary session by the government, which opens and closes this session as it thinks fit. The extraordinary session has, however, become the most ordinary, since it habitually takes place every year. Parliament never manages to complete the budget during the ordinary session, and the government finds itself regularly obliged to summon Parliament towards the month of October.

In this delicate compromise between republican and monarchical traditions a concession has been made to the former, to the effect that the President of the Republic is

bound to summon the Chambers if so demanded by an absolute majority of their members ; but this measure has never been more than a dead letter. It is especially useless in face of the fact that contrary to the intentions of the Constituent Assembly the activity of Parliament is practically continuous. The disadvantages arising from this disregard of the Constitution have often been pointed out : the activity of Parliament becomes feverish ; scandalous sittings become more numerous ; intrigues develop, and the disturbance spreads to the country ; too many laws are passed, and ministers who are obliged daily to defend their own existence have no time to consecrate to their country's interest.

Each of the Chambers elects a certain number of its members for the purpose of directing its work ; they comprise a president, vice-presidents, secretaries, and officials, charged with the material management of the house, the control of the staff, and of order and security in the whole building. This committee is elected for one year.

The Presidents of the Chambers are important personages in the State. At public functions they walk immediately after the head of the State. They lodge in State palaces and draw in addition to their salary as members of Parliament a salary of 72,000 francs per annum. The President of the Republic never forms a ministry without having first consulted them. Two Presidents of the Senate in succession, M. Loubet and M. Fallières, have risen to be President of the Republic. The presidential chair of the Chamber was adorned by Gambetta. For several years it was occupied by the late Paul Deschanel, remarkable in that he held no other great office in the Republic, and became a kind of permanent President of the Chamber, at times owing his success (thanks to the secret ballot) to a majority which would certainly have overthrown him had he been a minister.

However, though elected by a majority, the President must never consider himself as the representative of a party. His impartiality is a habitual but absolute rule in French constitional law.

An increase in his real authority, however, is certainly to be desired; it ought not to be confined to maintaining order and proper behaviour in the house during debates. The President ought to direct the work of his assembly; he should carefully bring to the front urgent deliberations, and prevent those absurd, involved discussions on the mostdivers subjects, which make the minutes of a debate look like a chinese puzzle; he should keep speakers to the point, place a check upon violent excesses of parliamentary eloquence, and call attention to subtle points of the problems under examination. What efficiency he would ensure in legislative work by effectively using such authority and direction!

Each chamber makes its own regulations, by means of resolutions which have the force of acts, and are the only ones which are valid on the vote of a single Chamber. This is of capital importance, for while such regulations must necessarily complete the constitution, they can also either perfect or paralyse it. In order to realise their importance it is enough to say that everything concerning interpellations in the houses is included in them, and consequently the regulations determine in a practical way the responsibility of ministers, an essential item in the parliamentary *régime*. Moreover, since they control the proceedings of legislative work, the regulations are to a certain extent responsible for its efficiency or the reverse.

The regulations determine the method of voting. Voting is public, so that except in the case of an election it is always possible to know how every member has voted. This rule is not without disadvantages; it leads a hesitating member to obey the dictates of his constituency rather than those of his own conscience and his country's interests. The

ordinary method of voting is by show of hands; but if it is a question of serious business such as the opening of credits (other than local ones), the establishing of a new tariff or the reduction of an old one, or if the vote by show of hands gives but a doubtful result, or finally if twenty members demand it, a ballot takes place; each member places in the receptacle presented him by the usher a slip bearing his printed name, white for the affirmative and blue for the negative. Thirdly, upon the signed demand of a greater number of members, a public ballot may take place, each member having to present his slip at the tribune in person, sometimes indeed being called upon by name.

The second method of voting gives place to the regrettable practice of voting by proxy. Deputies in the house vote with the slips of absent members. Some deputies even make a profession of always being present and habitually take charge of the boxes of several of their colleagues from which derives their name of "*boitiers.*" Thus at some sittings there will be but a dozen or so deputies on the benches and yet the votes will number hundreds. Doubtless a large number of deputies have an excuse for absence in that they are sitting on committees while the public session is in progress; while others perhaps are working at the library. Nevertheless such customs do no service to the present system of government in the way of influencing public opinion. When all is said, why keep up this display of deliberation, discussion and debate, since a great number of the members vote without having been present at them, without even knowing that they have voted.

The regulations organise the procedure of work in the Chambers. Theoretically no question comes before an assembly before it has been studied by a committee whose findings are set down in a brief report. There are permanent committees, each for a special object, to which the Chamber can send a question for examination; committees are also

specially formed to study a particular question. The regulations allow two forms of nomination, in order very properly to prevent committees being exclusively composed of representatives of the majority. The first method is that of nomination by the " bureaux." Every month all members of Parliament are divided by lot into a certain number of sections (eleven in the Chamber, nine in the Senate), called " bureaux." Each *bureau* nominates one, two, three, or four committeemen. The regulation assumes that in a certain number of the bureaux the minority in the Chamber will be in the majority and consequently this minority will be represented on the committee.

The second method is one of proportional representation. All members in both Assemblies have been asked to join a definite political group. Each group is allowed a certain number of committeemen, approximately proportionate to the number of its members, and it appoints these men itself; the Chamber has simply to approve the choice in public sitting. The ratification is a mere formality conducted amid general inattention, and consists simply in the President reading the names of committeemen at the beginning of each session.

An honour extremely sought after is that of being appointed committee reporter, for a well-written report brings its author into the limelight; it is of importance since the " Chambers are the arena where battles are fought out." The reporter on a ministerial budget comes to consider himself easily enough as qualified to run the ministry; the budget committee has sometimes been considered as a " committee of successors." These reports form often very valuable documents. They show that there are in the democratic Chambers both great enthusiasm for work and a remarkable public spirit.

However, there is always a fly in the amber, and the system of committees, which England has not so far made

use of, is not without its disadvantages. Presidents of permanent committees consider themselves as quasi ministers, and are disposed to hinder the action of the ministers actually responsible; committeemen are prone to exaggerate their real importance. A young deputy entrusted with a report is like Napoleon at the siege of Toulon; his special aim is not to do the work rapidly and efficiently, but to attract attention. Consequently he will overthrow if necessary the most firmly founded plans, start everything again at fresh expense, and if he cannot make a remarkable report, will at any rate make an enormous one. But these committeemen are not technical experts; the president of a committee should have a judicial staff at his bidding, which could act as a separate drafting committee and should be composed of eminent men.

The change of tone and behaviour already noted as the result of the introduction of universal suffrage has had its effect upon the regulations. The old copyholding Chambers, composed as they were of landed gentry, recognised only a moral code for establishing order. The Chamber was relying upon no regular ruling when it expelled Manuel in 1823 for the duration of the session. The democratic Chambers, however, have had to establish in their regulations a graduated scale of penalties. For instance there is first the call to order; second, the call to order officially recorded, entailing the loss of half salary for a fortnight. These first two penalties are pronounced by the president, but the third is a censure pronounced by the whole Chamber on the motion of the President, and entails the loss of half salary for a month; fourthly, censure accompanied by temporary exclusion is pronounced under the came conditions. This entails non-participation in fifteen sittings, and loss of half salary for two months. The deputy who attempts to enter the house in spite of the

sentence can be excluded for forty sittings, and even be imprisoned for three days.

The regulations of the Senate contain similar measures, but the tranquillity of that Assembly has rendered unnecessary such penalties as we have just mentioned.

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Chapter IV

THE CHAMBER OF DEPUTIES

The Chamber of Deputies is the more important assembly ; it is in a manner of speaking the centre of political life. It has sometimes been reproached for having destroyed the balance of power which the 1875 Constituent Assembly tried to realise, and for having destroyed it to its own advantage. Certainly at various periods when the executive power apparently abdicated and the Senate effaced itself, it has seemed that government by two assemblies according to the system of the separation of powers was more or less giving way to government by a single assembly or convention.

There are but two conditions of fitness to be complied with in order to be elected deputy, apart from that of satisfying the electorate. First, the candidate must have reached the age of twenty-five years ; and secondly he must have made a declaration of candidature. This must be made at the Prefecture on the fifth day before the election, in person, by an agent, or by letter of introduction to the effect that he is standing as a candidate. In default of such a declaration, he is liable to be fined ; his posters will be torn down and voting slips in his name will be void. This rule was formulated in the law of July 17th, 1889. At that time General Boulanger had planned to present himself for election in a great number of constituencies and to obtain by this kind of indirect public vote sufficient authority to attempt a *coup d'état*. The declaration of candidature was then introduced to put a legal bar to multiple candidatures.

A candidate can present himself only in one constituency, and that constituency must be the one in which he has made his only or first declaration of candidature. One result of this law is that no man can receive a spontaneous expression of confidence from his fellow citizens; unlike M. Voisin, who, in 1871, was transported as a civil prisoner to Germany, and learnt in prison that his compatriots of Versailles had elected him deputy. Another result is that a candidate cannot take his chance of success in more than one constituency, nor can he have the authority which in former times men such as Thierry, for instance, received from being elected for several departments. This curtailment of the liberty of electors proceeds from a measure dictated by the circumstances of a particular period, and if not afterwards abolished it should certainly be made less rigorous.

Democracy tends to form large assemblies. The older *régimes* used to favour more restricted ones, which rightly or wrongly they considered calmer, more moderate, and less disposed to violence. The Chamber of Deputies is smaller than the first Constituent Assembly of 1789, which counted 1,200 members, but it is generally considered to be still too large; its legal number according to the law of March 27th, 1914, is 602 members. This number has a close connection with the method of election which we are about to examine.

Since the Chamber represents the whole of France the logical ideal would seem to be for France to form a single electoral college to vote for the whole of the deputies. Such an ideal, if it is one, has the great defect of being entirely impracticable. How could electors inform themselves of the abilities, character, and morals of 602 different people? It is therefore necessary to divide the country up into districts, each one to elect a certain number of deputies; the districts are known as constituencies. If the districts are small and only one deputy is elected for each, you have

what may be generally termed the single vote system, or *scrutin uninominal*. If, on the other hand, the country is divided into larger constituencies, each one electing several deputies, each elector will put a cross on his voting slip against as many names as there are seats for the constituency and you will then have, to use again a general term, the multiple vote system, or *scrutin de liste*. The electoral law of 1875 laid down that the election of deputies should be made by arrondissements according to the *scrutin uninominal*, but in the years that followed, this single voting system was very violently attacked, notably by Gambetta. As President of the Chamber in 1881, he had not hesitated to leave the chair in order to support the multiple voting system and when later he became head of the government he endeavoured to get this method of voting officially recognised as a constitutional principle ; but it was not until after his death that the *scrutin de liste* was finally established by the law of June 16th, 1885.

However, the law was only in force for a single election, that of the October following. The results of the new method gave a great shock to the republicans (the Conservative Right gaining unexpectedly a large number of seats), and following upon the movement led by General Boulanger, a return was made in 1889 to the *scrutin uninominal*. After several years of practice this " petty ballot " as Gambetta had called it, became the object of very virulent criticism, summed up in the words of M. Briand, when he described the system as one of " stagnant pools." This campaign finally resulted in the law of July 12th, 1919, which is still in force ; and which decreed that henceforth all elections were to be made by departments on the system of the *scrutin de liste*.

The Chamber has even considered a proposition of M. d'Iriat d'Etchepare to the effect that the election of deputies should take place by " regions," a new group

composed of several departments, and the government has submitted to the Chamber a possible plan of such divisions for electoral purposes.

The election of deputies is now made according to a system of imperfect proportional representation. Before the law of July 12th, 1919, the elections of deputies were conducted on a majority principle, and two ballots were taken if necessary. A candidate could be elected at the first ballot if he had polled more votes than those of all other candidates put together (i.e., more than half the total number of votes polled). Failing this, a second ballot was taken and the successful candidate was he who polled the most votes, irrespective of the other candidates. The former was known as an *absolute* majority, and the latter as a *relative* one. Such a majority principle is observed under the same or similar conditions for all other elections, such as those for municipal and general councils, etc. For these the law of July 12th, 1919, has also admitted a very incomplete system by which seats may be proportionally divided between the various parties. The principle of proportional representation has thus so far been allowed, but a very important condition has been imposed upon it. Should any one party obtain an *absolute* majority (i.e., one more than half the total number of votes polled), then that party gains all the seats.

This plum reserved for an absolute majority may be traced to the compromise between the system of proportional representation and that of the majority pure and simple. The present system is therefore a kind of half-caste, which has caused considerable discontent especially among the Socialist party, which has not obtained as many seats as it would have done under a perfected system of proportional representation.

However, the present system, such as it is, only comes into use when no party obtains an absolute majority.

These characteristic anomalies of the law have set in motion a vigorous campaign in favour of reform, which has at the moment every prospect of success.

The law of July 12th, 1919, provisionally fixed the number of deputies at 602, the number which the Chamber actually contained when the law was passed, and which was kept for the elections of November 16th following. But starting from the next elections the law of July 12th provided for a new number of deputies. Each department elects deputies in the proportion of one deputy to every 75,000 of its inhabitants, with a minimum of three deputies. If the fraction remaining exceeds 31,000 an extra deputy is elected. This rule has the effect of reducing the number of deputies, and it is possible that it may be repealed.

Deputies are elected for four years! This figure is again a proof of the moderate spirit of the 1875 Constituent Assembly. They kept a middle course between the democratic extreme of 1793 (one year), and the conservative extreme of Villèle's law (seven years). It should be noted, however, that this measure, though so important, does not form part of the constitution, and could consequently be modified without any special procedure.

At the end of his term of office the deputy can present himself before his constituency, who may re-elect him for an indefinite number of times. This rule has been criticised with considerable harshness. In addition to power, which has a very legitimate attraction for every ambitious man, the legislative mandate presents certain material advantages which, once possessed, are not lightly surrendered. Hence, a deputy is tempted to sacrifice the dictates of his conscience to his desire for re-election. Membership tends to become a career, or, as M. Poincaré puts it, " the daily bread of adventurers in politics." If the outgoing deputy were not re-eligible, he would perhaps devote himself exclusively to the general needs of his country. But it is difficult enough

already to recruit several hundreds of competent members by means of elections, and it would be folly for the country to be confronted every four years by completely fresh assemblies, who would buy their experience at the country's expense. Moreover, while there are perhaps as many as two hundred deputies who might be changed without any appreciable difference, there are at least a hundred and very likely more who do honour to the Republic, and whose absence would be very seriously felt in national life.

All deputies come to the end of their term of office on the same day. Certain writers deplore this "complete renewal," for which they would like to substitute "partial renewal." Their chief argument is that such a system of renewal may cause sudden changes of policy, following upon the election of an entirely new Chamber, whose members possessing no experience will have to learn their business and yet receive a salary. So far this argument has been disproved by the facts : renewals though theoretically complete, are always more or less partial, since a large number of deputies keep their seats at the general election. This refutes very decisively the reproach so often levelled against French democracy of being fickle and variable. M. de Mackau remained a deputy for half a century, having taken his seat in the Chamber for the first time under the Empire ; Brisson, who entered the National Assembly in 1871, would have had a like record had not death intervened ; M. Ribot entered the Chamber for the first time in 1878, and only left it to go to the Senate ; the late Paul Deschanel represented the same constituency from 1885 until his election to the Presidency of the Republic in 1920 ; and M. Barthou has also represented the same constituency ever since his entry into politics in 1889.

Finally in this connection we have but another proof of the spirit of compromise and combination in which the 1875

Constitution worked; the Senate has been given that guarantee of continuity and stability which is provided by "partial renewal."

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Chapter V

THE SENATE

The Senate of the 1875 Constitution was modelled, at least so far as concerns its general character and authority, on the Chamber of Peers of the Restoration and July Monarchy, and this Chamber of Peers had itself been modelled on the English House of Lords.

According to the purposes of the Constitution the Senate is primarily a deliberative assembly, and it must exercise its influence in favour of moderation and stability. Its duty is to oppose at least a temporary resistance to the unconsidered enthusiasms of the Chamber of Deputies, who are younger, more numerous, and represent a more direct expression of universal suffrage.

In order to play this part successfully important rights have been conferred upon it, which are in principle the same as those of the Chamber of Deputies. Thus the initiation of laws can proceed from a Senator just as well as from a Deputy ; and the government can at its pleasure submit the draft of a law to the Senate or to the Chamber.

There are, however, certain exceptions to this rule concerning the equality of the two assemblies. The first is directly imitated from the English Constitution, namely, that finance bills must first be brought before the Chamber of Deputies and passed by them. The Chamber, it is said, has a right of priority in financial matters ; but it must be insisted that this preference is, in theory, one of priority and nothing more. For several years, however, the Chamber

of Deputies has adopted the custom of putting off the budget vote to the last moment before it comes into operation, in such a way that the Senate at the penalty of having to start the year without a budget finds itself forced to rush through the examination of the budget referred to it by the Chamber. Usually the Senate accepts it with very slight modifications, though raising at the same time periodic but vain protestations against this manœuvre of the people's Chamber. There is no valid reason for this inferiority of the Senate, since, unlike the House of Lords, whose rules have been rather blindly imposed upon it, the Senate represents, doubtless somewhat indirectly, the whole body of taxpayers.

The Senate has, on the other hand, certain special prerogatives. First of all, while it cannot itself be dissolved under any conditions, the Chamber of Deputies can be dissolved by the President of the Republic, provided he have the Senate's express approval. One is tempted to think that this prerogative was conferred upon the Senate in order to limit the powers of the President of the Republic, but historically, it is nothing of the sort. The Marechal de MacMahon, President of the Republic when the laws of the Constitution were being drawn up, feared that the President by himself would not dare to use this grave right of dissolution, and accordingly wished to have the high authority of the Senate as a support.

Another prerogative of the Senate originates in the old judicial prerogatives of the House of Lords. It can be formed into a High Court of Justice.

Finally be it noted that the Senate has to play a part in entire keeping with its character of a steady and permanent body. In the case of an exceptional crisis arriving during the government's holiday, when the Chamber of Deputies is dissolved, the Senate meets with full authority to control the exercise of executive power by the Council of Ministers. It is only in this case, as well as when constituting a High

Court, that it can exercise its prerogatives outside the time of session necessarily common to both chambers.

Suffice to mention here, for the matter will be insisted on later, the essential rules for the composition of the Senate. The return of the liberated provinces of Alsace and Lorraine to France involved an addition of fourteen seats in the Senate, so that it now numbers 314 members, elected for nine years at a stretch ; they are elected by men who have themselves been elected by universal suffrage, of which the Senate is consequently the concentrated expression ; the senators of each department are elected by a college, summoned at the capital town under the presidency of the President of the civil tribunal, and comprising the deputies of the department, the members of the General Council charged with the administration of the department, the members of the district councils, and delegates from the municipal councils. In principle the individual standards of ability and morality are the same for senators as for deputies.

Public attention is focussed on the Chamber of Deputies, and whatever Parliament does, it is the Chamber of Deputies which is held responsible. Whatever one may have thought as to the advisability of raising the salary of members of parliament, it must be admitted that it did not increase the popularity of members themselves, and while on that occasion the deputies were abused right and left, the senators were not even mentioned. Public opinion seems much more readily to allow the right of the Senate to protract its work, than that of the Chamber to take holidays. When the slowness of legislature is complained of, it is always the muddle of the Chamber that is referred to rather than the inertia of the Senate. All the evils of the method of election for the Chamber are daily emphasised, while the evils of the senatorial elections are passed over in silence ; it is difficult to say whether this inattention springs from affection or deference, but it is certainly due in part to indifference.

The progress achieved in the Chamber naturally attracts more attention than the work of deliberation carried on in the Senate ; initiation is more attractive than reflexion, and imagination than reason. This effacement of the Senate from public notice is immeasurably greater than any diminution which its authority may have suffered in the realities of political life. Its discretion and silence have combined to procure it an unmolested position in the republic, but let there be no mistake, behind that reticence and silence a very effective work goes on.

Rare are the decisions which draw public attention upon it, but the Senate makes use of other methods of action more flexible and yet more sure. It will abstain, for instance, from confirming certain propositions of the Chamber ; but it will bury them. It wields no mere titular authority.

The institution of the Senate occupied a very important place in the constitutional debates of the National Assembly.

The two works, *La France Nouvelle*, and *Les Vues sur le Gouvernement de la France*, which influenced so directly the men of 1871, had both envisaged a second chamber, and its existence had consequently become an axiom, an indisputable dogma for the conservative majority of that day. It was, indeed, the essential condition of that party's temporary resignation to a republican *régime* ; and accordingly the organisation of the Senate was demanded even before the form of government and the other governmental institutions had been decided upon. Article 5 of the law of February 13th, 1873, declares :

" The National Assembly shall not dissolve before deciding upon : (1) the organisation and methods of transmission of executive and legislative power ; (2) the creation and attributes of a second chamber. . . ."

The first constitutional law of a definite character passed by the National Assembly was the law of February 24th, 1875,

concerning the organisation of the Senate. This explains the words of a champion of the extreme conservative right, M. de Belcastel, which at first sight seem so astonishing: "The Constitution of 1875 was before everything else a senate." On the other hand, the principle of a single chamber seems to have been one of the most firmly held tenets of the republican party's traditional doctrine. Gambetta, inviting his friends "to look towards the breach in the Vosges,"[1] persuaded them to betray their principles momentarily (as he thought) and in the higher interests of their country. To employ a well-worn metaphor, it was a question of keeping the torch of the Republic alight during the difficult crossing of a plain exposed to every wind; when at last the shelter should be reached, the flame would rise again, and blaze with a new brightness and an unstained lustre. The republican constitution should be rid of its monarchical defects, to wit, the Presidency of the Republic and the Senate. The destruction of these two institutions was at the beginning of the Republic the chief item in the programme of the radical party.

To-day, the suppression of the Senate is no longer for any party a real and sincere problem of the moment. Certain members of the Radical party ardently affirm now and again their adherence to this ancient tenet; but there is no longer any general enthusiasm for it. It is permissible to state that this evolution has coincided with the radical party's gaining a majority in the Senate.

It must also be mentioned that the resistance of the Senate to certain factory reforms has sometimes aroused the rancour of the Socialist party.

On the whole it may be said that republican opinion

[1] The "breach in the Vosges" is a reference to the loss of Alsace and Lorraine, and consequently to the ever present menace from Germany, which was to be met by a stable and united government at home.

with regard to the institution of a second chamber has undergone much the same evolution as took place in the mind of Gambetta himself ; at first resigned with difficulty to the institution of a Senate, this great republican became after a few years its resolute and reasoned supporter. In 1882, he declared that the principle of two chambers " is the guiding principle of all parliamentary government, and remains despite past errors the guiding principle of all democratic government."

II

The National Assembly wished to make the Senate an instrument of resistance, but such an intention proved to be itself at variance with the actual organisation it decreed for the Second Chamber. The intention however had been expressed as clearly and as definitely as possible : " We must," said Antonin Lefebvre-Pontalis, " we must find means of giving democracy safeguards and protections Very well ! in the Second Chamber, you have that safeguard and that protection."

The character of the Senate was affected also by the enmity towards this institution shown by the Radical Party, who formed the opposition, and were considered at the beginning of the Third Republic to be irreconcilable. They declared : " The decisive reason against the Senate is, in essence, that it is a weapon forged against universal suffrage, against the *masses*,"—so national sovereignty was designated in the National Assembly.

The Assembly carried out its plan by the following measures :

(1) It made the Senate a small body.

(2) It allowed its members a long period of office, including the power of partial renewal.

(3) It imposed special conditions both upon the electoral body, and upon the candidate with regard to eligibility.

(1) The Senate is composed of few members in order to avoid disturbance. At the present moment it numbers three hundred and fourteen. It is an axiom of constitutional science that numerous assemblies are turbulent and tumultuous on the surface, and at bottom easily stirred by impassioned and rash proposals. The Senate, being a deliberative body, must therefore be few in number. This restriction in numbers probably accounts for the particular "tone" of its debates, very different from that of the people's chamber. The Senate is no easily moved, emotional crowd.

This inferiority of numbers puts the senators in a minority when they have to combine with the Deputies to form a new assembly, such as Congress, called to elect a President of the Republic, or the National Assembly, charged with the revision of the Constitution. Consequently the one hundred and sixty-one Senators who gave a momentary check to electoral reform on March 18th, 1913, would have been powerless to prevent constitutional reform once it had been set on foot. Another result is that the High Chamber may favour either a different policy or a different candidate to that of the Chamber of Deputies. On the whole, whenever deputies and senators combine to form a new assembly, the Senate may well consider itself as vanquished and its decisions of no account; afterwards some rancour will be left which will be vented at the first opportunity, when again in its own house it is on equal terms with the other chamber.

(2) The senators are sheltered from the turbulence of democracy by their long term of office and the right of

partial renewal. By these two measures the 1875 Constituent Assembly intended to ensure the continuity of ideas and the spirit of tradition.

The newly-elected Chamber of Deputies represents the actual opinion of the majority ; but it is opposed by a Senate representing former and sometimes far earlier convictions of the people. The third of the Senate which is next to retire does not represent, as has sometimes been said, the ideas of nine years ago ; for it must be remembered that the Senate is elected by men who have themselves been elected. Thus senators approaching the end of their term of office may represent the people's convictions of from thirteen to fifteen years before, according as one considers them elected by the deputies and municipal delegates composing the electoral college, or by the general councillors. A general election of senators, which some desire, would draw the Senate and Chamber nearer together, not only by the origin but by the date of the opinions which they would be called upon to represent ; but the Constituent Assembly of 1875 evidently wished the Senate to be behind the Chamber of Deputies ; it foresaw the conflict ; one might even say, it welcomed it. Moreover, its intention has been almost uniformly realised. In the early days of the Republic the Senate was ready to favour MacMahon, and take his part against the republican chamber in the affair of the *Seize Mai*.[1] So far as contemporary events can be judged, it may be wondered whether there is not at the present moment a similar conflict of opinions between the two chambers, but under different names. At the beginning of 1919, though, it is true, the elections were delayed by the war, the first third of the Senate dated from 1906, the second from 1909, the third from 1912. The Senate is,

[1] The Marechal de MacMahon was successful in obtaining the Senate's approval to dissolve the Chamber on May 16th, 1877, on the grounds of its excessively republican tendencies.

therefore always several years behind the policy of the country and the Chamber.

(3) The electorate was decided upon and conditions of eligibility laid down, in view of the deliberative character of the Senate.

It is vital that the Senate should be composed of men of experience, and there is consequently only one condition of eligibility—that of being at least forty years old. It was from the electorate that guarantees were specially demanded. The National Assembly wished to counterbalance the power of numbers. The Duc de Broglie and M. Lefebvre-Pontalis had proposed that Senators should be elected by the *élite* of society, by all " who raise themselves by merit, experience, great services, or acquired wealth." But the Assembly was not slow to perceive that the proposed lists might very well serve for invitations to prefects' balls, but that they could not give sufficient authority to an assembly elected in a democracy. It resigned itself to making the Senate, in the words of Gambetta, " the representation and as it were the concentration of all assemblies directly elected by universal suffrage."

The constitution reserved to the Senate itself an important part in its own recruitment. Seventy-five senators chosen for life were to be elected by the Senate itself. The institution of " perpetual senators " ensured the enrolment of a chosen band, freed from the anxiety of re-election and the cares of a constituency, who could consequently consecrate themselves entirely to the general interests of their country ; but the institution perished in 1884 under the blows of the *invidia democratica*. It had functioned long enough for its *demise* to be regretted. Among the Senators for life we may recall the names of Laboulaye, Barthélemy, Saint-Hilaire, Wolowski, Eernst Picard, Littré, Schérer, Crémieux, Scheurer-Kestner,

Bérenger, Jules Simon, Dupanloup, Allou, Bardoux, Berthelot, Broca, Emile Deschanel, Dufaure, . . . When the institution was suppressed, life Senators in office retained their seats, the last of whom, M. de Marcière, died in 1918.

Side by side with the Chamber representing the masses the National Assembly proposed to set up a body which should represent the only other group existent, the Commune. Every Commune should send one and only one delegate, to be chosen by the municipal council. Victor Hugo was thus sent as a delegate for the city of Paris. The Senate was in the words of Gambetta: "A grand council of the communes of France."

Moreover, quite apart from this dogmatic conception, the system did rest upon a very intelligent political idea. As the great towns were politically advanced, so the village communities were politically conservative. A system by which all Communes were equally represented in the senatorial body ensured a majority to the small and conservative ones.

When the Republicans took possession of the Republic after the fall of MacMahon, they immediately endeavoured to change this system; the 1884 revision resulted in varying the number of delegates to the Senate according to the numbers of municipal councillors; but even to-day proportional representation of the Communes is still a long way off. Large towns are still poorly represented: Marseilles, with its 500,000 inhabitants, has twenty-four delegates, but seventeen towns of the Bouches-du-Rhône, containing together no more than 30,000 inhabitants, have also twenty-four delegates. Out of 945 senatorial electors of the Seine region, Paris has but 110. The surrounding districts account for the rest. Thus anomalies are even to-day intentional. Aided by the delegates from the Communes, the conservative National Assembly of 1875 wished to favour

conservative ideas ; but the moderate republican parliament of 1884 intended in its turn to favour moderate republican opinions ; and it decided that these were chiefly represented in the small towns, the boroughs and capitals of the cantons, all of whom were republican by nature, easily converted to anti-clericalism, and indifferent to social democratic reforms. These are the characteristics of the Senate of to-day.

The electoral college of the Senate is exposed to corruption and administrative pressure ; and the more the college is restricted the greater danger of corruption there is. A few votes decide the issue ; and consequently everything will be done to obtain them. Doubtless it is a question of a choice ; corruption would be less difficult under a system of universal suffrage ; it would certainly be of a different kind. I have never heard of bribery by money, but in former times M. Clemenceau reproached candidates for " attentions " towards their electors, in the way of dinners, theatres, etc. The bane of Senatorial elections, as Senator Pelletan witnessed in a despatch dated January 11th, 1912, is corruption by promises. Candidates promise to exert their influence on behalf of electors, of their friends and of their respective Communes. In consequence a senatorial election enters the domain of administrative pressure. The first delegate of the municipal council is always the mayor, and under the present system of centralisation, the mayor is dependent upon the prefect.

In spite of the arrival of democracy the governing classes still keep their prestige ; men holding public offices, landlords, writers, orators, professors, still lead public opinion ; and these social leaders still form a majority in the elective assemblies. They comprise the whole electoral college of the Senate, which is thus elected by 75,000 *bourgeois*.

This method of electing the Senate involves as a direct result the passage of leading men from the Chamber to the Senate, and consequently the entry of the most eminent personalities of the political world into the higher chamber.

It is rare for a man to enter the Senate right away, without having first passed through the other elective offices ; in fact, more and more is it true that deputies have the best chance of becoming senators. The passage to the Senate is considered as a step forward in a parliamentary career. Politicians of the very first rank emigrate to the Senate : a whole series of former Presidents of the Council have been eager to move to the other Chamber : Léon Bourgeois, Méline, Dupuy, Clemenceau, Ribot, Pichon, Raymond Poincaré. Three Presidents of the Republic, M. Loubet, M. Falliéres and M. Poincaré were taken from the Senate ; from the end of 1898 until the declaration of war this assembly provided eight out of thirteen Presidents of the Council.

This skimming of the Chamber, while profitable to the Senate, is yet not without its dangers. The place for great politicians is the Chamber where plans are initiated and the great aims of national life outlined. Their duty is to inspire, direct, control, still remaining in the Chamber. It is in vain that they hope to correct matters from outside. If one wishes to stop this passage of leading men to the Senate its cause must be looked to ; what they seek in the high Chamber is the long period of office with practically certain re-election. They do not wish to expose themselves every four years to the fatigue of an electoral campaign and to those setbacks which in France have been the lot of even the most prominent, including such men as Ferry, Clemenceau, Jaurès, A. de Mun, Goblet, and Brisson. One of the numerous advantages of a perfected system of proportional representation will be to ensure at any rate

a partial security of office to men at the helm: men of great ability will then be able to devote all their energy to the service of their country, in the assembly where such service can be most usefully employed.

III

The function of the Senate is to resist, and in its own way it fulfils it. Rarely, indeed, does it openly revolt against a measure of the popular Chamber. It prefers to oppose to it the force of inertia. The Chamber in a fever of impatience has adopted a certain solution; the motion passed proceeds to the Senate, which very quietly appoints a committee, and the deliberations that follow are endless. Meanwhile the Chamber can no longer occupy itself with the problem which is thus removed from the area of discussion; little by little other problems arise to monopolise public attention; the original question is buried; and when after several years the report is presented, and after several more months, has been discussed, the original ardour is singularly cooled, and compromise is easy.

Again, a problem often arises on the eve of elections, at which time one of two things happens; either the matter concerns the reform of the electoral system, and it is put off as being too late; or it deals with reform promised to the electors, and then the deputies submit to any and every demand of the Senate, so as not to appear before their constituencies with empty hands.

The Chamber will often incorporate a reform in the budget in order to break down the resistance of the Senate and force it to accept. The Senate then employs a method used also in the case of important fiscal measures, whose normal place, be it noted, is in the finance bill. It declares that these measures require longer and more searching debate than can be accorded them at a time when the budget

must be completed. The Senate does not directly reject these measures; it merely separates them—the pretext being the necessity for a special and more profound examination. But this examination will be delayed to the furthest possible limits, with the secret determination never to proceed with it at all. Thus in July, 1911, the Senate separated some weighty fiscal measures dealing with the rights of succession and of exchange, and in December of the same year it separated certain measures in the budget act modifying the law of April 5th, 1910, on workmen's retirement pensions.

If an attempt is made to estimate what policy the Senate follows either by open resistance or by deft side-tracking, it will be seen first that:

(1) The modern Senate is sufficiently advanced from a purely political point of view.

If it be true that one party in the National Assembly wished to make the Senate an instrument of war against the Republic, then it was singularly mistaken in its calculations. In 1876 there was certainly a Conservative majority, but in 1877 the Senate numbered 177 Republicans among its members, who increased to 201 in 1882, to 233 in 1885, to 244 in 1891, and to 247 in 1894. To-day the extreme Conservative Right numbers no more than twenty senators. Since 1879 the Senate has therefore witnessed the rise of an ever-increasing republican majority. At the first its policy was obviously very moderate, since it refused to pass the famous Article 7 and its conservative tendencies made it oppose the Bourgeois-Doumer ministry in 1896. But after this last effort, the majority has gone steadily in favour of the Left. Imbued with the spirit of the radical party, it is sufficiently advanced from the political point of view and reserves its resistance to oppose social reform. The Senate of to-day differs completely from the Senate that attempted to resist Jules Ferry's policy of laicism and adopted on

December, 14th 1880, Jules Simon's amendment : " Schoolmasters shall teach their pupils their study towards God and their country," for it has associated itself with the anti-clerical policy of Waldeck-Rousseau and Combes ; it has lent its support to measures directed against congregations ; and passed rapidly and without modifications the law of the separation of Church from State.

(2) Secondly, it is to be observed that the Senate is hostile to systems of taxation of democratic tendencies.

It considers them likely to give anxiety to accumulated wealth, and above all to discourage work and thrift. Doubtless the complaint has often been made that the Chamber has prevented the Senate from exerting its prerogatives over the budget. The rule is that the finance bill must first be passed by the Chamber of Deputies ; but it very often happens that the Chamber keeps the budget till the last moment, and only sends it to the Senate a few days, sometimes a few hours, before the beginning of the year to which it applies. The Senate is thus deprived of the faculty, enjoyed by all such assemblies under parliamentary government, of bringing the discussion of the budget into line with all great political discussions. Very often the discussion of the budget is rushed through. This does not mean, however, that the Senate passes it with its eyes shut, and the Chamber is well aware of that. Several times since 1906 the Senate has rejected the disguised summary of the Chamber, and demanded that from one to several dozen provisions should be submitted in its stead.

The Senate can thus have, and in fact does have a definite financial policy, which reveals itself by an undisguised hostility to systems of taxation with democratic tendencies. It is opposed to taxes on luxuries, or to any kind of fiscal inquisition, as witness its two rejections in 1907 of a tax on game preserves, and of a tax upon deposits in credit banks ; it is hostile to fiscal reform of levelling

tendencies, as witness its rejection in 1910 of an increase on the annual tax for multiple shops, an increase which was proposed as a democratic measure in favour of the small shopkeeper. It resists reforms which would strike too hard at acquired wealth ; it delays or whittles down any increase in rights of succession or exchange ; it has checked the increase of succession duties for only sons ; finally, and most important of all, until 1917 it held out against a tax on revenue.

(3) Thirdly, it will be seen that the Senate is loth to pass laws impregnated with the spirit of state socialism.

It is opposed to nationalisation in all its forms. Forced by political necessity, however, it agreed to the State purchase of the railways of the West. M. Rouvier declared on this occasion : " The Senate is no more." It retards the laws of so-called workmen's protection. It took four years, three months and one week to consider the proposition passed by the Chamber relative to the weekly holiday. By the same procedure the bill concerning retirement pensions was for four years removed from the Chamber's order of the day. As for the bill of retirement pensions for railwaymen, the Senate kept it for seven years without putting it on its order of the day ; so that, passed for the first time by the Chamber in 1897, it did not become law until 1909. Thus when the Senate decides to pass a bill the Chamber hastens to accept any modifications the Senate has introduced into it, for fear that once returned to the Luxembourg it may lie there again untouched for years.

IV

The resistance of the Senate is sometimes ill-judged ; and it is difficult to justify, for instance, its resistance to the improvement of polling procedure, to electoral reform by proportional representation, and so on. Nevertheless, the

Senate does play an extraordinarily useful part as a counterbalancing force.

The Senate imposes delays, but not insuperable barriers. It very rarely persists in a course which is obviously contrary to the expressed will of the other Chamber. In fact it does not assume the power to resist indefinitely the decisions of the popular assembly. For instance, against its own principles it gave way and allowed the purchase of the railways of the West, and on the proposal of M. Ribot it ventured the country on the uncertain road of compulsory retirements. On this occasion it was reproached with having neither convictions nor sense. Possibly the reproach was just; but it had what was better, a true idea of the part a second Chamber should play under representative government. It advises rather than judges; and restrains rather than forbids. Its delay does not develop into abuse, nor its prudence into deadlock. It follows the path of progress, but does so, it must be admitted, with a grumble. More cannot be asked of it.

The Senate is useful as a brake. I do not wish to make use of the worn-out metaphor of the car of progress. As things move in a democracy, I should have to bring it up-to-date, making it still more ridiculous by adapting it according to the progress of mechanical transport. Suffice it to say what juggernauts modern vehicles would be without brakes!

There is a too general tendency in certain circles to lay the blame for all delays in legislation at the door of the Senate; but this is unjust. The Chamber is responsible for them in part. Thirty years ago the abolition of public executions was brought forward; everyone was agreed about it. For the last forty years everyone has desired the necessary legal reform; and yet it has not been realised.

The Chamber is indeed often responsible for the subsequent objections of the Senate. The Chamber has to

resist undue demagogic pressure, a public duty which deputies are often not in a position to fulfil, owing to the loss of liberty of action, for which the modern method of election is responsible. They may perhaps let the current sweep over them, hoping that the Senate will dam it further out: by such petty betrayals of conscience, they leave to the Senate the unpopular task of resistance. Even if this be somewhat an exceptional case, the Chamber will certainly often pass a hurried, insufficient motion, counting upon the revision which the Senate will not fail to give it.

It is an error, however, to think that Parliament divided into two chambers is too cumbrous a machine to be put quickly into motion, and cannot help but retard the passing of even the most urgent measures. The law of July 17th, 1889, which endeavoured to oppose the plans of Boulanger and his followers by forbidding multiple candidatures passed the Chamber on the 13th, and was voted by the Senate on the 15th, in spite of a national holiday. The law against anarchist sedition and that dealing with the increase of the parliamentary salary were passed with the same celerity on July 18th, 1894, and November 13th 1906.

The prevalent fault in the drawing up of laws is indeed not that of slowness but of haste. A parliamentary assembly which prides itself upon being a sovereign power and, hence infallible, will always ill brook the restraint that collaboration with an expert body such as the State Council entails; such a collaboration would humiliate it as a control or a surveillance. Parliament itself must therefore provide conditions for the maturing of laws after they have been drafted. It is no good relying upon the rule governing the number of readings; Parliaments will always ignore it on the justified plea of urgency, or by the custom which decrees that there shall only be one deliberation of real importance. There remains the system of two chambers;

and even with this security laws are not made with sufficient slowness and precaution.

It is imperative from a fundamental point of view that laws should be made leisurely. A few good laws are better than many bad or simply mediocre ones. Vigorous and continued working on the part of the legislative machine is not to be desired. The example of countries where direct appeal to the people is practised shows us that extraordinary misconceptions abound in political circles as to the wish of the country with regard to any particular reform.

The triumph of trade union ideals has led to new customs among state officials ; in congresses, in meetings, and by manifestations of every kind, they imperiously demand an increase of salary. The Chamber gives way when it is a case of large numbers, because then the reform is " democratic." The Senate resists and incurs unpopularity for its attitude.

It has been blamed for having refused certain public expenses ; but the fact that the budgets have been steadily mounting must not be forgotten. On the eve of German aggression they seemed to absorb the taxable resources of the country ; one can but imagine to what figure they would have risen had not the Senate stood firm. Increase in public expenditure must only take place gradually, even when it is necessary ; and it is the same with all reforms.

The question " Where are we going ? " exposes one to criticism and even to ridicule. It has been asked for centuries and the world keeps going forward. Every age sees the crumbling of what was once thought eternal, and the victory of what the wisest had declared impossible. The reform at which our fathers shook their heads has been realised without any subsequent disaster ; but that does not prove our fathers wrong ; every reform must be realised in its own time, that it may find the social, economic and financial conditions requisite for its success. There must

always be men to say and to repeat, "Where are we going ? "

In the political organisation of France it is the senators who are charged with this invaluable yet often thankless task. The existence of a Second Chamber is the fundamental institution of every organised democracy.

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Chapter VI

THE PRESIDENT OF THE REPUBLIC

Jules Grévy was the first President of the Republic to be elected after the 1875 Constitution. Curiously enough, he had started his political career by proposing to the Constituent Assembly of 1848 that there should be no President of the Republic, but merely a President of the Council of Ministers, to be appointed and dismissed by Parliament. The doctrine of the "Grévy Amendment" had been that of the Republic Party under the Second Empire; but while the national Assembly founded the Republic it made no pretence of fashioning it according to the model of the extreme Left, and it accordingly established a Presidency of the Republic.

Such an office assumes first of all that the executive power is invested in one man, and secondly that this man is elected to the office for a definite period, which can be shortened by no outside power.

The French Government is thus composed of two elements, the one fixed, permanent, stable—the President of the Republic, known also as the Head of the State; the other, mobile—the ministers, appointed by the President according to more or less definite indications from the parliamentary majority, and who can be overthrown by that majority.

In 1848 the President, elected by universal suffrage, had overthrown the Republic to establish an Empire. To prevent the recurrence of such a proceeding, the 1875 Constitution decided that the Head of the State should be

elected by the two Chambers, united in congress at Versailles, under the direction of the committee of the Senate.

This method of voting has the advantage of quickness. We can say as heretofore: The King is dead. Long live the King." For instance, MacMahon resigned on January 30th, 1879, and on the same day Jules Grévy replaced him. Grévy resigned in his turn on December 2nd, 1887, and Carnot was elected on the 3rd. Carnot was assassinated on June 23rd, 1894; in this case it was necessary to let emotion die down, and Casimir Périer was not elected until the 27th. Casimir Périer resigned on July 15th, 1895, and on the 17th Félix Faure replaced him. Félix Faure died on February 16th, 1899, and M. Loubet was elected on the 17th. The three following Presidents, namely, M. Falliéres, M. Poincaré, and M. Deschanel, were elected according to law one month before the normal end of the ruling President's term of office; and upon M. Deschanel's resignation, shortly to be followed by his death, M. Millerand was elected to the Presidency.

The President of the Republic would not have sufficient authority if he were elected by but a small number of members; accordingly the Constitution laid down that a candidate could not be elected until he had secured an absolute majority. It is therefore necessary to proceed to an indefinite number of ballots until one candidate has obtained one vote more than half the total number of votes polled. In point of fact there have never been more than two ballots: Jules Grévy was elected and afterwards re-elected at the first ballot; Casimir Périer, Loubet and Fallières, the same; and Carnot, Félix Faure and Poincaré were elected at the second.

The Constitution wished to invest the President of the Republic with a real and dominating authority, and he is accordingly elected for a longer period of office than that of any other head of a republican state: he is elected for

seven years. This statement admits of no exceptions. A Member of Parliament elected at a bye-election will go out of office at the same time as the Chamber if he is a Deputy, or at the same time as his " block " if he is a Senator, the Senate being divided into three blocks which become re-eligible in turn every three years. The President, however, is invariably elected for seven years, even if he takes the place of another President who has not completed the normal term of office. But why seven years ? Happy-go-lucky commentators are not wanting to show that it is a very good figure ; it is not too long, which would be contrary to democratic principles, nor too short, which might impair the stability of the institution. All this is true. Moreover Biblical tradition, pagan mythology, and Catholic theology all attribute to this number a symbolic and as it were sacred character ; it is an easy figure to adopt. The real reason, however, is this : while the Assembly was deciding upon what length of office the ruling President, MacMahon, should enjoy, the Marechal himself informed the Assembly by a message that a period of seven years " would be most in accordance with the energy that he could consecrate to his country."

The outgoing President is immediately re-eligible without any restrictions, and it was certainly the wish of the 1875 Constituent Assembly that he should actually be re-elected if he showed himself worthy. However, Jules Grévy has been the only President to be re-elected (December 28th, 1885) ; and two years later he had to resign. Carnot, elected on December 3rd, 1887, was assassinated before the end of his first period of seven years (June 23rd, 1894) ; Casimir Périer remained for but a few months in office (June 27th, 1894 to January 15th, 1895) ; Félix Faure died four years after his election (January 17th, 1895 to February 16th, 1899) ; and M. Loubet and M. Falliéres were not re-elected. In their message of thanks on the day following

their election several of the later Presidents have even declared that they do not desire re-election. This usage, which seems to have established itself, is in direct contradiction with the spirit of the Constitution ; at bottom it is unworthy, and it is harmful from every point of view. The Presidency is not a fat living to be passed on to another when it has been enjoyed as long as decency permits : it is a post of honour and of action, which a man should hold so long as he is maintained there by the confidence of the nation expressed by the voice of the Constitution.

The dignity, prestige, and outward ceremony which attend the President of the Republic are very similar to what is observed in monarchies towards the throne. The French nation has not as yet shown a desire to banish all pomp from public ceremonies, and the words of Siéyès are still true when applied to the head of the State, that he typifies " a nation at once refined, elegant, and magnificent."

He receives a salary of 1,200,000 francs per annum, out of which he has to defray certain expenses, including payment of the officers of his military staff, and of the officials of his civil household. This salary is considerable when compared with that of the highest officials ; it is meagre when contrasted with the income allowed to the pettiest sovereigns. There is, moreover, a grave defect in the system, in that this salary is fixed annually by the budget act ; this disregard of the Constitution leads to bargainings not at all in keeping with the dignity of the head of the State.

The President of the Republic is lodged at the *Palais d'Elysée,* and his official country houses are the castles of Fontainebleau and Rambouillet. Among other personal distinctions he is the sovereign head and grand master of the Legion of Honour ; and he is protected against the press by a special libel charge known as that of "*offense.*"

Finally, he enjoys a privilege formerly only granted to monarchs ; he is declared irresponsible ; so that in fulfilling

the duties of his office he incurs neither any political penalties, such as votes of censure, official criticism, or repeal, nor criminal ones: the only exception being if he renders himself liable to a charge of high treason. He is not, of course, otherwise *inviolable*; he is responsible for crimes or misdemeanours committed apart from his office just as an ordinary individual; but in this case he still has the privilege of being tried by no other court than the Senate.

It may well be asked, "What is actually the division of authority, of practical influence, and of real power between the two elements of government, the President of the Republic and the ministers?" That is a question of which American public law has no cognisance; for the President of the United States is *de facto* the head of the State. He chooses and dismisses his ministers as and when he pleases. He considers them to be the instruments of a policy which he alone determines. He imposes this policy upon them; and in case of resistance he breaks them. He is a sovereign head.

But the President of the French Republic cannot claim such a position. In 1919, for instance, the most powerful man in France was M. Clemenceau; the most powerful man in England was Mr. Lloyd George, and the most powerful man in America, President Wilson.

The President of the Republic is therefore, in a position similar to that of the King of England. He is the head of the State, but he is not the head of the government. That is an idea which it will be useful to analyse.

(1) The 1875 Constituent Assembly insisted that the President of the Republic should be a powerful and respected head of the State.

This intention originated in the reiterated demands from the leading men of the majority in the Assembly, and notably from Laboulaye in his report of June 22nd, 1875.

"The country," said Buffet later, "is willing to have a powerful authority provided it be controlled. The government shall no longer be humble and submissive; the country will not permit the executive power to take such a place." It must not be forgotten on the other hand that many of the members cherished, more or less openly the plan of having the king back "when the harvest was in." They were bent on making a Constitution in which it would be sufficient to change the method of electing the head of the State, and replace the armchair by a throne in order to make it into a monarchy. The National Assembly, as witnessed one of its members, the Vicomte de Meaux, "laid the foundations of a monarchical building"; it created "an independent and effective executive power," which "supported by the Senate," would be able to counterbalance the democratic power of the Chamber of Deputies.

Accordingly, in order that the President might be powerful, the Constituent Assembly surrounded him with prestige, and loaded him with prerogatives. The list of these prerogatives is surprising: if the President wishes, the Chambers may not sit for more than five months in the year; and if the Chambers are turbulent during this constitutional session, the President may on two occasions prorogue them for a month at a time, and send the members to calm down in their own constituencies. If he considers that the Deputies are taking a path contrary to the will of the nation, he can with the approval of the Senate dissolve them *en bloc*. This right of dissolution has never existed in any other republic in the world. He shares with the members of both assemblies the power of initiating laws. If he thinks a law passed by the two Chambers unwise, he can refuse to promulgate it, can call the attention of the country to it, and order Parliament to debate upon it further. He can always appeal to public opinion by messages. The president is head of the Army and the

Fleet, and thanks to a personal intervention of MacMahon's in the constitutional debates, he has *theoretically* the right to command them in person like an emperor. He has the right of immunity, or "grace," that jewel which the Constituent Assembly plucked from the crown of Louis XVI.

In his person he represents France both at home in national solemnities, and abroad when treating with foreign nations; it is from him that ambassadors receive their letters of credence, and it is he who sends out French ambassadors among other powers; alone, be binds France by his signature. He can even make secret treaties. Nothing of any importance in the state can be done without his signature, and no human power can force him to give it against his will.

Reading this list of prerogatives, much more imposing than those of the President of the United States, one cannot but be impressed; the President of the Republic seems to be endowed with almost regal powers, and one can understand how Gambetta insisted that in setting up such a President, they were abandoning the traditional opinions of the republican party. But let us proceed to the end. We must know whether the President of the Republic has in fact real authority, or whether he simply makes the gestures of authority.

(2) The Constitution, while entrusting the governing power to the President of the Republic, has made it difficult for him to exercise it.

He was to represent the people, and he has lost touch with the people whom he is supposed to represent. He was not to be the servant of Parliament, and yet it is by Parliament that he is to be elected. Afterwards every act of independence on his part, so far as it concerns those to whom he owes the supreme ruling power, will tend to appear like an act if not of revolt at least of ingratitude.

The members of the Constituent Assembly thought they

could compensate this initial inferiority of the President of the Republic by making him irresponsible: he would thus, they thought, be able to exercise his prerogatives with entire independence. The members of the opposition on the extreme Left, Louis Blanc, Marcon and Madier de Monjau, drew attention to this design, claiming that irresponsibility was an institution intended to safeguard personal power, and as such was essentially dangerous to liberty. But both sides were mistaken. In a country of advanced political education and imbued with a love of justice, he alone can act who is responsible for his actions. If the ministers are responsible and the President irresponsible, then the ministers will govern, not the President. One can guess the more or less sub-conscious thoughts of the ministers: "If," they say to the President, "we do what you wish, we lose our authority, you keep your own. Therefore, you must do what we wish; we are directly chosen from among the nation's representatives; we do not lose touch with the people; they would overthrow us if we ceased to express their will. It is therefore for you to give way." And the President of the Republic does give way.

Certain of his prerogatives fall into disuse, for instance, his right of dissolution. Some even have never been exercised, such as his right of legislative veto. And as for the others, he certainly exercises them, but it is only in form; he executes the will of his ministers. On this point the decisive witness of M. Casimir Périer, a former President of the Republic may be heard: "Among all the powers which seem to be attributed to him, there is but one which the President of the Republic can exercise freely and in person: it is that of presiding at national solemnities" (in a letter to the *Temps*, February 22nd, 1905).

(3) Circumstances have increased the difficulties which paralyse the constitutional authority of the President.

The office of President had the misfortune to be entrusted at its inception to men who transmitted it to their successors with diminished powers. The Marechal de MacMahon was not long in justifying the distrust with which he was regarded by the republicans from the day of his election. He used the powers which the republican constitution had granted him in an anti-republican spirit, and on May 16th, 1877, pronounced the dissolution of the Chamber on the grounds of its excessive republicanism. The country, however, did not support him. Henceforth dissolution, which is in reality but a method of consulting a supreme judge from whose verdict there can be no appeal, namely, the people, has seemed like an attack upon the rights of the nation as represented by the Chamber ; so that now, even should a President be confident of obtaining the consent of the Senate, he would not dare to avail himself of this prerogative, a prerogative which is constantly used in England as a mark of respect to the electoral body. The Maréchal de Mac-Mahon had to retire, his authority undiminished, it is true, but himself vanquished. His retreat was dignified, but he left the Presidency weakened.

Grévy was called upon to replace him ; and the republican constitution took its second and very decisive step forward during his Presidency. It was being entrusted for the first time into entirely republican hands. A singular irony willed that the first republican President should be the same man who in 1848 had started his political career by moving the abolition of the Presidency as an amendment to the Constitution. In temperament, character, and in his political career, Grévy was essentially negative. Two failures made his fortune : the first was his manifesto in 1848 against the presidency ; and the second was his protest against the Constitution in 1875. He was now called upon to occupy in the constitution which he had attacked, the office which he had wished to abolish ; and he

accordingly strove to reform the Presidency according to his conception of the office in 1848. No longer, however, did he wish openly to abolish it : he occupied it, and effaced it. It was to that course that he pledged himself in his message of thanks on the day following his election : " In sincere obedience to the great law of parliamentary government, I shall never oppose the national will as expressed by the voice of the constitution." In politics, habit is all-powerful, and precedents have the force of rules. The remembrance of past concessions condemns every desire for independence ; former concessions involve new ones, and Presidents on entering office find that in spite of themselves they are obliged to add a fresh knot every day to the web which holds them prisoners. Just as the powers of the American President were enlarged by Washington, so those of the French President were diminished by MacMahon and Grévy.

The mistrust of the republican party, moreover, kept from the Presidency just those men who, it was expected or feared, would make energetic use of the President's prerogatives. Thus Grévy was preferred to Gambetta, Carnot to Jules Ferry, and Félix Faure to Waldeck-Rousseau. In 1893, amid the disturbance and emotion caused by the anarchist movement and the assassination of President Carnot, Parliament contrary to its usual practice, did call a man with a reputation for energy to the head of the State : but after no more than a few months Casimir Périer broke out of the gilded prison in which he stifled. In his resignation message of January 15th, 1894, he said ; " The Presidency of the Republic is deprived of means of action and of control. I cannot reconcile myself to the weight of moral responsibilities upon me and the impotence to which I am condemned." And in his statement to the military court at Rennes, in the Dreyfus case, he declared : " If I was often ignorant, while I was President, of things

concerning the march of public affairs, yet there was never a matter brought to my personal knowledge which I did not convey to the ministers responsible."

For fourteen years the Presidency was held by two former presidents of the Senate; and during that time it appeared like an honourable retreat for a veteran wearied by political strife, whose advice was asked without any intention of following it, and who thus found himself, in the so-called supreme magistracy of the State, retired from public affairs.

But, it is asked, if the President is nothing more than a figure-head, if it has become a constitutional principle that he should make but a pretence of governing, would it not be better to do away with his office altogether? Would not that represent both a simplification and an economy? One must reply that such a conclusion would far outstrip our premises. It is admitted that the President of the Republic is not the governing force intended by the Constitution; but he still plays as a higher power a part which is not merely useful, but indispensable to the Republic.

The majesty which surrounds his position must first be considered. The President of the Republic personifies the unity of the nation. He gives the country a feeling of security. He may be represented as the captain who in normal times allows the helmsman to navigate, but will take command when the ship is in danger. He conveys to the fighting forces the cheering encouragement of the whole nation. His high position ensures that in times of crisis his words shall have a profound effect upon the country.

Secondly, he performs an important work in the nomination of ministers. France does not possess two strongly organised parties, with leading men who become ministers almost automatically when one of the parties triumph. It has already been noted (see Chapter III.), that

Parliament is split up into numerous groups and sub-groups. Accordingly it is rare for men to be clearly pointed out to the head of the State either by the country's indications or by the will of the Chambers. Moreover, French political history offers this curious paradox, that the most numerous party of the republican majority, the Radical Party, has often been unable to provide a President of the Council of Ministers. The choice of ministers is, therefore, very far from being that passive act of enrolment on the part of the President of the Republic as certain journalists have described it. It is, within the generally very wide limits of parliamentary choice, an act of free will, and one most delicate to accomplish, since it demands the nicest discernment, the most matured knowledge of men, and the most exact conception of the country's needs. If a test of the President's ability in this matter were needed, it is provided by the fact that the Cabinet resigns at the election of a new President. The constitutional irresponsibility of the President of the Republic does not prevent his bearing a heavy moral responsibility towards the nation in the nomination of his ministers.

The head of the State has finally a very large sphere of influence. He is indeed something more than a great elector of ministers, and a kind of "emergency officer." The trend of French politics has been to strip him of effective authority; but it has not denied him a moral authority which he is in an admirable position to exercise. Released from the absorbing work of directing the details of a department, he has time to review as a whole questions of which each minister tends to see but one side. He perceives in short, what is not perceived at close sight. He can avert discord between various parts of the administration. He has time to study general politics at home and abroad. He thus creates a kingdom for himself in which he reigns an absolute monarch. If he is industrious and remains long enough at the helm, he obtains

an extraordinary grasp of great questions ; and can thus be a most valued guide to his ministers. Nothing can be done without his signature ; and while he does not abruptly and imperatively refuse it, he can always delay it. Moreover, before conceding it, he can give advice which has every chance of being followed. In this way he renders very useful service to his country.

He could render still greater service if he had greater authority : and the only way of giving it him would be to bestow upon him the increased authority resulting from a wider suffrage. It would still perhaps be dangerous to proceed to what seems to be the logical conclusion of these propositions—the election of the President by the people, and in any case there is no need to rush immediately to extremes. The college which elects the President of the Republic might be enlarged and yet its principle conserved. It could be composed of high officials chosen principally with an administrative or political end in view, who would form themselves into an electoral college only as a special duty ; or the President could be chosen by the electoral college of the Senate, adding to it the senators themselves. Under such a system in which members of Parliament would still obtain a controlling influence, the calibre of the heads of the State would be unaltered. As in the past, men of conciliatory spirit would be raised to the supreme magistracy, but the reform would give them greater authority to exercise their powers.

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Chapter VII

MINISTERS AND PARLIAMENTARY GOVERNMENT

According to the classic theory of politics, the parliamentary system as established by the 1875 Constitution depends upon a balance of power; on one side there is Parliament, and on the other, the head of the State, immovable, irresponsible. Government, that is to say the general direction of public affairs, must result from the collaboration of these two organs; and the instrument of this collaboration, as it were the coupling of the parliamentary machine, is the Cabinet, composed of the whole body of ministers. Collaboration is ensured by an obvious junction, which did not proceed from the brain of any theorist, but resulted from the nature of things; namely that the head of state nominates the ministers, and Parliament can overthrow them. The Minister's obligation to resign when he no longer has the confidence of Parliament is known as his political responsibility. From what has been said in the preceding chapter, it will be seen that this balance of power so nicely adjusted in theory, has in practice been destroyed by the effacement of the President of the Republic. Ministers are now the prime factors of government, advised by the President of the Republic, if you will, and controlled by Parliament, especially by the Chamber of Deputies. At certain periods under governments which were sufficiently strong and vigorous to maintain themselves in power, this predominance of the Cabinet has been such that our *régime* might have been described as a ministerial government; and there is no doubt that for a considerable

period—the matter will be treated at greater length in the next chapter—the direction of foreign policy at any rate certainly depended upon the will of one man, and that man the Minister of Foreign Affairs.

Theoretically the number of ministers is determined by the President of the Republic, but actually it is the politician appointed to form the Cabinet who decides upon the number of his collaborators, and the distribution amongst them of the various offices of government. The number is consequently variable ; before the war it was usually about a dozen, but during the war it varied very greatly. Sometimes it was thought wise to " concentrate " the government in order to make it more vigorous, and thus its numbers dropped to ten under the Briand ministry. Then again, it seemed advisable to give it a large standing both in Parliament and in the country, and it rose to about twenty. A certain order of rank is observed among the ministers. The Minister of Justice, who still bears the ancient title of Keeper of the Seals, is either President of the Council, or comes immediately after him in rank ; and he is by right of office vice-president of the Cabinet of Ministers.

The Cabinet can co-opt under-secretaries, called after the name which the Ministers bore during the *ancien régime*. Their inferior position is materially denoted by the fact that their salaries never exceed 25,000 francs per annum, and their number varies very much. Some departments have none, and others several. Their powers are very varied and are determined for each one personally by a decree. Their rights, notably that of being present at the deliberations of the Cabinet, and that of replying personally to questions, vary in each department. Their usefulness is above all of a political nature. There is, perhaps, a man of some following in the Chamber whom it is desirable to attach to the government, but for whom a portfolio cannot be found ; he is therefore given a *demi-portfolio*. Such a man would

be a disturbing force in the opposition, and he is accordingly included in the government.

Again, it is perhaps thought advisable that there should be somebody to superintend, control and generally smarten up the bureaucracy of a certain branch of the administration; and a member of Parliament is accordingly put at its head with the title of under-secretary of State.

On the other hand, it happens, more rarely, that it is desired to confer special authority upon an official, or a specialist in command of a great public service, and he is then allowed to share the prestige of ministerial office, by being appointed under-secretary of State. This institution of under-secretaryships of State belongs essentially to the parliamentary *régime*.

Though not expressly so stated in the Constitution, the President enjoys by force of custom and still more of reason the right of appointing and dismissing ministers. With regard to their appointment, it is surprising to find that a minister's countersign is necessary, so that the Head of the State cannot appoint a minister unless his nomination has been countersigned by a minister in office. Now the countersign is the act on the part of the minister by which he makes himself responsible for an action, and approves it. You, therefore, have the spectacle of a Conservative President of the Council obliged to approve (since he gives his countersign) a progressive successor. In practice, the outgoing President of the Council countersigns the nomination of his successor; and the latter then countersigns the nomination of his colleagues. If a head of the Government in high dudgeon at being defeated should refuse to countersign the nomination of his successor, an extremely delicate situation would be created.

The President of the Republic is recognised to possess the right of dismissing ministers. In point of fact political history affords but one example of an express

dismissal of a minister, namely, that of Chateaubriand by Louis XVIII. The Marechal de MacMahon certainly dismissed the minister, Jules Simon, but by requesting him to resign. That does not mean to say that Ministers always leave office voluntarily. Quite recently an under-secretary of State, M. Mail, who became keeper of the seals in 1917, was not directly dismissed, but his duties were taken over. The rule is that ministers should resign ; but the right of the Head of the State to dismiss them must be retained, since it would have to be used in the case of a minister being defeated in the Chamber and yet refusing to resign.

A minister's salary amounts to 60,000 francs per annum, which is not an extravagant figure when it is considered that a minister has to defray all personal expenses of his office, in particular that of the ministerial car. Some ministers (the Home Secretary and the Foreign Secretary) are in charge of secret funds, over whose disposal they have an absolute discretion ; but of course they could not draw on them to defray expenses which are laid to their own charge. The minister has rooms in the palace in which his department is situated. This custom has been criticised on the ground that it tends to keep ministers in power, but actually, on account of the uncertainty of tenure, most ministers keep a private house and only have reception rooms in the official building.

In the American Republic unity of government is ensured by the personal direction of the President of the United States. The ministers concentrate upon the working of their own departments and do not deliberate between themselves. Under a parliamentary *régime*, however, the head of the State does not possess sufficient authority to ensure by his person unity of government. Such unity must therefore result from the ministers deliberating among themselves, and this gives rise to a Council of Ministers. It is the most important cog in the political machine.

It is taken for granted by the Constitution, and some mention is made of the duty of appointed ministers to form themselves into a Council, but no rules are laid down. There is, therefore, very little definite knowledge concerning its duties and actual power. There are two kinds of ministerial deliberations; those held in the Elysée in the presence of the President of the Republic, and known as Councils of Ministers; and those held without the head of the State, when they are known as Cabinet Councils.

It is difficult to define the exact position of the President of the Republic, with regard to the Council when it is held in his presence. It seems, however, that he confines himself to being present, just as the prefect is present at deliberations of the General Council. He does not preside over it; the President of the Council is in charge, and it is he who directs debates, calls upon the speakers, and puts motions to the vote, in which the head of the State can take no part. The Council, perhaps, is taking a vote to decide upon the choice of a high official, a sectional President of the Council of State, for example; the head of the State will not be able to vote upon it; he can give his opinion weighted by all the authority of his position and his person, but that is all. It is true that this decision which is taken in his presence cannot become valid without his signature, and from this fact alone his advice acquires very considerable weight.

The direction of governmental affairs cannot be left to the Cabinet in general, since the head of the State has not sufficient authority to ensure unity of action on its part, and accordingly the Cabinet has its own chief, who is known as the President of the Council of Ministers.

His first duty, as indicated above, is to control the deliberations of the Ministers. His represents the general policy of the government before the Chambers, and has consequently to reply to the more important interpellations. He addresses the country in the name of the government,

and is, in a word, the head of the government. Waldeck-Rousseau, a very authoritative head, went so far as to insist upon seeing and censoring all speeches which his ministers were to deliver even outside Parliament.

The prime duty of the President of the Council is to ensure co-ordination between the various departments, and it has been suggested more than once that the President of the Council should be excused the duty of conducting a department himself, so as to be able to superintend still more effectively the work of his ministers ; the President of the Council, that is to say, should be a minister without portfolio. Since the war the experiment was made in the case of the minister Viviani ; but the advantage of real, effective, and practical authority which the control of a department gives, seems so far to have outweighed all other considerations. Nevertheless, the independent action of various departments involves a dispersion and hence a waste of energy. Since the war, there have been several ministers claiming to organise, each in his own department the same public services, notably in the matter of provisions, and the country has suffered from rivalry of this kind. One of the causes of the inferiority of French technical education can undoubtedly be traced to the rivalry between the ministries of commerce and of public instruction. There are even graver abuses : the President of the Council from 1902-5 ceased to interest himself in foreign policy. The Minister of Foreign Affairs of that time had for many years pursued a policy of his own, good in itself, but ill-served by his colleagues, the Ministers of War and the Navy. It was the duty of the President of the Council to have made certain that the plans of his Minister of Foreign Affairs were based upon sufficient military resources. The President of the Council must be before everything else a statesman.

It is characteristic of the parliamentary *régime* that Parliament does not confine itself to the duty of legislature

but exercises a control over its ministers. This control, it must be clearly understood, has to be exercised *a posteriori*. The Government follows its own policy dictated solely by its own conscience and the interests of the country ; and this policy only comes under parliamentary control when translated into Acts. The Government determines the general policy, always provided that it shall retire if disapproved. Were a ministry to seek initiative in the Chambers it would cease to be a national Government, and would become the servant of particular groups. "The Government," said M. Poincaré in 1906, "must in no wise abandon its directing rôle ; it must lead the majority, not trail behind it. In a word, it must keep firm hold of the honour and the responsibility of government." From 1902-5 another system had been tried with the consent of the opposition, by which the Government renounced its right of leading Parliament, and confined itself to following it. Fortunately the system soon died a natural death.

All this is not to say, however, that the parliamentary machine works perfectly to-day. The incontestable right of Parliament to control the appointment of officials has degenerated into a positive abuse. Members of Parliament, especially the deputies, and no longer as a Chamber, but considered as individuals, claim to control appointments and promotions in the public offices, at any rate in their own constituences. They reward electoral services by the gift of public offices, and ministers obtain the votes of confidence by granting concessions to the claims of deputies. A deputy has been known to force a school inspector to make not merely a few new appointments, but a complete change in the personnel of the staff. Recommendations are the bane of the magistracy. It is the upright who suffer from this custom, hence the public services, and hence the whole country. This abuse, however, carries its own restriction, in that it does not reach the

highest public offices, whose holders have no influence upon district politics ; thus the government is practically free in its choice of diplomatic agents. A man can be prevented by local partisanship from being appointed first President of a Court of Appeal, but he can without hindrance receive a place in the Court of Cassation, which, perhaps, he had not dared to expect. Moreover, one must avoid exaggeration. Even though a great number of deputies are tempted to exercise control over public offices, it does not at all follow that the ministers and heads of administration are always ready to sacrifice the interests of which they are the guardians.

That is a danger which might be met by a general reform of customs, and of the statute which regulates the status of officials, but especially by increasing the effective authority of the Head of the State, in whom ministers could look to a support which at present is only provided for them by Parliament.

There are three methods by which the general policy is controlled, namely those of enquiry, question and interpellation.

The Enquiry is an examination either of a single act, or of a general policy, by a committee of one of the Chambers. This committee can call witnesses, and the Chamber can decree in each case that the witnesses shall be bound by the ordinary rules of legal procedure. (Law of March 23rd, 1914.) The findings of the Committee are discussed in the Chamber. This method of control, however, is very rarely employed. A committee called to examine the conduct of M. Pelletan at the Ministry of Marine was never convoked by its President.

The *Question* and *Interpellation* are means enabling a member to obtain either from the government in general or from a particular minister an explanation of acts for which the Government or the minister is responsible.

The question generally refers to a detail of administration. When asked by word of mouth, and consequently in the Chamber, only two speeches are allowed, that of the member who asks the question, and that of the minister who replies. The other members must remain silent witnesses of this dialogue. The question does not terminate by any vote of the Chamber, but simply by the declaration of the President: "The incident is closed." The result is that this procedure is accompanied by general inattention on the part of the Chamber, and often even of the minister concerned.

In order to save the time of the Chambers and also to facilitate control over very delicate matters where oral debate is not without danger, for instance on a question of foreign policy, the procedure of the written question was instituted in 1909 by a slight modification in the law. A member's question is then formulated in writing, inserted in the *Journal Officiel*, and is there replied to. This reform has fortunately lightened very considerably the order of the day for public sittings and has often provided a rapid solution of petty disagreements which threatened to become as embittered as they were endless; but it has completely failed in its object so far as regards control over questions of foreign policy. Moreover, the written question has proved too facile a method for the private member of attracting the attention of the public and especially of his constituency, the result being that questions are asked without sufficient reflection upon insignificant details. "Why has not such-and-such a gendarme received the promotion which he has deserved? Why is a certain provision merchant having very good wine in his cellars not allowed to sell it to convalescent soldiers?" (*Journal Officiel* of December 21st, 1914.) Since the war, questions addressed to the War Minister have amounted to thousands and even to tens of thousands. On February 23rd, 1916,

8,656 questions had been asked by one Chamber alone since the new ruling; and on December 31st, the figure 25,913 was reached. Thus while the method has led to simplification on the one hand, it has also led to the production of a vast amount of waste paper and a new bureaucracy.

Interpellation is a more energetic procedure by which the Chambers exercise their right of permanent control over the Government. As with the Question, it enables a member to demand an explanation from the Government either of a definite action, or of its general policy; in the latter case it must necessarily be addressed to the President of the Council. An Interpellation opens a general debate in which all members may participate, observing the rules concerning the order of speaking. But what is vitally important is that a vote is taken by which the assembly expresses its opinion, either upon the ministerial action or upon the general policy of the Government, whichever was the object of the Interpellation.

The motion by which the Chamber expresses its opinion upon the debate which has just taken place is called the "order of the day," from the fact that after expressing its opinion or even without expressing it, the Chamber declares the Interpellation closed and passes direct to the next item on the order of the day. There is the *ordre du jour, pur et simple;* an open decision,—in which the Chamber does not express an opinion, all that is said being "the Chamber will proceed to the order of the day"—though to say nothing is often to express an opinion. There are also definite expressions of opinion (*ordres du jour motivés*); either of confidence—"The Chamber confident that the Government will hold to a strictly republican policy, will proceed to the order of the day," or of lack of confidence. A Government against which a vote of lack of confidence has been passed, is obliged to resign.

Some ministers will suffer an open decision, thus obtaining a respite of anything from a few days to several months, but the reason is generally that they lack firmness. Those who prefer to maintain their dignity rather than a precarious existence, demand a vote of confidence, and resign if in spite of this an open decision is given.

There are certain sanctions for this parliamentary control of the Government. The cabinet owes its existence to the head of the State; but it is Parliament which determines it in that existence. A minister is obliged to retire when he has no longer the confidence of Parliament; that is his political responsibility, an essential part of the parliamentary *régime* since it ensures a constant collaboration between Parliament and the Government. It is a *political* responsibility because it does not imply any violation of authority or fault on the part of the Government, but simply a disagreement with the Chambers.

It is also a combined responsibility, since all important acts of the Government are censored and approved by the whole body of Ministers, and some are even deliberated in council. But with regard to acts of administration which a minister has committed in his own department without the sanction of the other ministers, he is held responsible as an individual, and, according to the ancient expression, "he is shipped off." But experience has proved that this action far from lightening the ministerial bark is but the prelude to shipwreck.

There are several ways by which the Chamber can inform the Government that it has lost its confidence in addition to the direct method, a vote of lack of confidence. The Chamber can also pass a measure opposed by the Government, or reject a measure which the Government supports. In this case it is usual for the Government to direct the assembly on the political importance of the

division which is about to be taken ; this is called putting a question of confidence or a cabinet question. Thus on March 18th, 1913, M. Briand, having asked the Senate to vote for electoral reform, added : " I must conclude, if you refuse to vote it, that you want no more of this Government, in which case it is time for it to resign."

The question also arises whether ministers have any political responsibility towards the Senate, and whether they could be removed from office by that body. It is argued that the Senate is a conservatising force, and that in removing ministers from office it would be exceeding its authority, that it is not a sufficiently direct expression of the public will to exercise such a control over the Government, and that the parliamentary tradition of the Restoration would not permit the Upper Chamber to overthrow ministers. But on the other hand it is claimed that the Senate would be exercising its moderating influence in removing from office a ministry which was endangering the national Constitution ; and it is held, moreover, that the tradition of a monarchical Government cannot be applied to this case, since the Senate contrary to the old " Chamber of Peers " is elected, indirectly it is true, by the whole nation.

However, the actual wording of the Constitution certainly does authorise the Senate to overthrow ministers, who, it declares, are responsible towards both Chambers ; the spirit of the Constitution is also in favour of such a course, since to check the actions of a rash and revolutionary cabinet is a work of moderation and conservation. Finally, the Senate has given proof of its powers in actual practice, though less frequently than the Chamber ; thus in 1904, it forced out of office a strong Ministry under Bourgeois, and the Briand Ministry in 1913.

Ministries remain in office so long as the Chambers keep them there ; and their tenure consequently varies

very considerably. The French democracy has been heavily blamed in this respect for its extreme fickleness and the reckless way in which its Chambers have consumed one ministry after another. It has been described as a frenzied rush of cabinets across the political stage from one wing to the other. These criticisms though perhaps justified to a certain extent by certain periods in the history of the Third Republic, are for the most part greatly exaggerated; and the conclusions drawn from certain well-established facts are not always well founded. In attempting to estimate the average life of a ministry, it is useless to count those which were overthrown the first day they came before Parliament; Parliament would have none of them, and overthrew them, as was its legal right. This was the case of the Rochebouet Ministry (November 23rd, 1877), and the Ribot Ministry (July, 1914). One must also not take into account ministries which the Chambers only tolerated because there was no alternative, and which dragged out a few days' miserable existence, such as the Fallières Ministry which lasted but twenty days, from January 29th to February 20th, 1883. In comparison with these a considerable number of ministries have enjoyed a very respectable tenure, for instance, the Briand Ministry, fifteen months and nine days (July 24th, 1909, to November 2nd, 1910); the Freycinet Ministry, twenty-three months and one day (March 17th, 1890, to February 18th, 1892); that of Jules Ferry, two years, one month and nine days (February 21st, 1883, to March 30th, 1885); of Melinet, two years, one month and nine days; of Combes, two years, seven months and eleven days (June 7th, 1902, to January 18th, 1905); of Clemenceau, two years, eight months and twenty five days, (October 25th, 1906, to July 20th, 1909); of Waldeck-Rousseau, nearly three years (two years, eleven months and fourteen days, from June 22nd, 1899, to June 3rd, 1902).

Moreover, it must be noted that a new ministry does not mean an entirely new personnel; some ministers have outlasted several ministries, thus continuing as ministers without interruption; for instance, M. Barthou and M. Briand were ministers for four years, seven months and nine days (from March 14th, 1906, to November 2nd, 1910); M. de Freycinet for four years, nine months and seven days (from April 3rd, 1888, to January 10th, 1893); M. Ruau for five years, eight months and twenty five days (from January 24th, 1905, to October 22nd, 1910); M. Dujardin-Beaumetz for five years, nine months and seven days (from January 24th, 1905, to November 2nd, 1910); M. Mougeot for six years, six months and twenty-one days (from June 28th, 1898, to January 18th, 1905); M. Delcassé for very nearly seven years (from June 28th, 1898, to June 6th, 1905); finally, M. Adolphe Cochery for more than seven years. The number of men eligible for ministry in Parliament is, all told, not very great; so that certain men accumulate, with intervals between, many years of office. M. de Freycinet, for instance, who was four times President of the Council, and thirteen times a minister, held office in all for ten years and nine days without counting his work as minister of State during the war.

Moreover a change of ministers is very desirable. Ministerial stability is only an advantage in moderation. The minister is actually the controller of a bureaucracy, but he must not have the spirit of a bureaucrat, which he undoubtedly would have if he remained for very long periods in office. His vigilance must constantly be kept on the alert by parliamentary control, and the threat of removal. He is not a technical expert, but rather the political superintendent of a stable and specialised bureaucracy. Hence a certain instability of ministers is more advantageous than not. The aim is to obtain a balance;

and the French system of to-day is in my opinion not far from it.

It is a fundamental rule of parliamentary government that ministers can be chosen from the Chambers, can combine their office with their elective mandate, and can participate in the deliberations of the Assembly. In England, up to the time of Mr. Lloyd George's cabinet, the ministerial capacity was inseparable from that of the private member. English writers even defined the cabinet as "a committee of Parliament." In France the custom has been general without being absolute. The Ministries of War and of the Marine have often been held by experts unconnected with Parliament, such as noted generals and admirals: there has even been at the Ministry of Marine a member of the State Council, M. Picard. Again during the Third Republic, two diplomats, M. Flourens and M. Hanotaux, held office at the Foreign Ministry. Since December 12th, 1916, a high official in the Ministry of Public Works, M. Claveille, has held a seat in the Government first as Under-Secretary, and then as head of a department. A similar position has been held by M. Loucheur, a business man, previously unconnected either with Parliament or with the administration.

For some time government by ordinary members of Parliament has been severely criticised. The demand has been made on every side that specialists should take the place of amateurs. As we have already seen, this demand has been partially met by appointing to the Government an official and a business man. There is no doubt a real foundation for this outcry, in that technical ability does not yet enjoy the place and organisation in the French democracy which rightly belong to it. Every governmental department, as in England, should have a supreme administrative chief, with sufficient authority to ensure the unity and continuity of its policy. Moreover,

granted that technical advisers must be obedient to the political power, the question arises whether it is in the nation's interest that the public and Parliament should be in complete ignorance of their activities and opinions. A minister can decide upon a plan absolutely ruinous to state finance against the independent, considered and expert opinion of all technical authorities, such as the State Council and high officials ; but neither Parliament nor the country would be officially informed of this opposition ; and it would be considered a breach of faith for the experts to make known their real opinion, The experts perform their work in the background, while the minister monopolises the limelight: sometimes he acts against the advice of experts, and the nation does not know it ; sometimes it is the experts who act under cover of a minister, who does not understand the acts of which he is legally the author, in which case no one is responsible, and the nation, as always, is the one to suffer. French democracy needs therefore to establish relations between the politician and the expert on a new footing.

But to change the traditional method of appointing ministers, and to choose them solely from so-called specialists, comprising officials, and business men of every kind would be to proceed to a very dangerous extreme. In every order of human activity, general ability must collaborate with technical skill, and control it ; this rule applies with special force to the act of governing.

A man about to build a house, if he is sensible, does not put himself completely into the hands of an architect chosen haphazard ; he first gives care to the choice of his architect, and thus, unskilled himself, he exercises from the very beginning a control over the expert ; he then instructs him as to his wants which the architect must realise by technical means ; the house must be made after a certain fashion, for a certain purpose, of certain materials:

the owner will censor the plans submitted to him to make sure that they conform to his wishes ; he will even control the execution of the plans and the cost of the building. A person who is ill does not trust himself blindfold to the first doctor on the register ; he chooses his surgeon, discusses with him the advantages and disadvantages to be gained from an operation, and so on.

In just the same way the ministers are the representatives of the nation charged with controlling the specialists in their work of reparation, management and upkeep of the national building ; and thus while representing the sovereign will which controls the administration, the ministers themselves must be strangers to that administration ; otherwise the nation would fall into a state of uncontrolled bureaucracy, the worst of all *régimes*, which is characterised by general inefficiency, red tape and stagnation.

Gladstone said that he knew of not a single reform, even those which have been proved by experience to be excellent, which was not unanimously opposed at its inception by all experts. The ministers are, through Parliament, the delegates of the nation in command of the administration, with the duty of seeing that the nation's will prevails, and they must therefore be men of policy. In the United States the President is the supreme representative of the nation, and his ministers are politicians delegated by him. In modern France, Parliament is the supreme representative of the nation, and ministers are members of Parliament.

Remembering that ministers are but political heads and not technical heads of departments, one can easily understand what is meant by the term " portfolio dance " (*valse des portefeuilles*) ; *i.e.*, when one man takes control in turn of the most widely different departments.

On the whole it may be said without irony of the French system of government, that it is the envy of Europe.

Imperial Germany was ruled by officials, which fact undoubtedly led them to perfection in administrative details. But on the other hand it was the cause of most serious blunders in questions of policy; and unlike errors in administration which can be remedied, errors in policy are generally irremediable. Germany had prepared her plans of aggression, her armaments, her munitions, her equipment, but by her political errors, she provoked the opposition of England, Italy, America and the whole world. Every day her newspapers declared that Germany was in need of statesmen, and openly envied France her Briand and her Clemenceau.

This problem, which some seem to think new, is in reality as old as the fundamentals of political science. "Particular ability," wrote Mirabeau, "is sufficient to produce first rate clerks, but the best clerks make the worst ministers." The deputy who interrupted Lamartine, saying that chiefs of division were more capable than ministers, provoked this riposte; "Sir, on questions of policy, they are not so capable, and since we are considering government we are considering policy." Naturally the right man must be in the right place, and the man who is appointed to the honour of conducting a government department must certainly justify his choice by special ability; but it is the ability not of the technical expert, but of the statesman.

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Chapter VIII

FOREIGN POLICY

One of the longest discussed problems of political science concerned the ability of the Republic to defend the country's interests abroad. To-day the controversy is over. Facts have spoken plainly enough. The Republic was charged with the destinies of the country at a moment when defeat had completely isolated her; yet forty years later France was able to confront German aggression with a sheaf of alliances, stronger than even the most optimistic had dared to hope; these are two facts which cannot be denied. By the formation of balanced groups of powers French diplomacy re-established the equilibrium broken in 1870 by Germany's attempt at supremacy. It was responsible more than any other for the reconstitution of Europe. By building up a great colonial empire, it repaired in large measure the errors of Louis XV., and faithfully served the interests of France. Yet now in several quarters her diplomacy is blamed for not having been sufficiently democratic. It will be well to examine how far this criticism carries, and to what extent it is justified.

A remarkable characteristic of constitutional evolution in all countries is that democratic progress is very much slower and always less complete in foreign than in home politics. Democracy has believed up till now that it was not interested in diplomacy: "What is of vital importance to every citizen," wrote Rousseau in his *Lettres Ecrites de la Montagne*, "is the observance of laws at home, possession of goods, and the safety of individuals. So long as all is

well with these three things, you can leave the Councils to negotiate and conclude treaties abroad as they will; the dangers most to be feared will not come from that quarter." Democracy is above all greedy of equality, liberty, and social reforms; it has no taste for foreign politics.

The solution of this problem of the direction of foreign policy, as of every other fundamental problem which the Constituent Assembly of 1875 had to face, was one of compromise. Theoretically the constitution gave the President of the Republic a dominating *rôle* in the direction of foreign policy.

In principle, it is the President of the Republic who alone can represent the nation in all external relations; from him ambassadors of foreign powers receive their letters of credence, and French ambassadors speak in his name; he conducts negotiations, and can bind the country by his sole signature; legally, he is the author of treaties; other nations recognise him alone, and take no account of the Chambers.

Governmental direction of foreign policy is subject to a double control. The Chambers have first of all a special control over certain treaties.

The President of the Republic is absolute master in diplomatic negotiations, and under no circumstances can the Chambers intervene irregularly in this domain; they must confine themselves to indirect and *a posteriori* control, following the ordinary rules of parliamentary government. Any intervention on their part which tended to depreciate the Government's complete initiative in this domain would be considered unconstitutional. The Chamber, for instance, could not request the Government to engage in negotiations with a particular foreign power on any given point; such an action, besides being contrary to the spirit of the Constitution, might cause the Government and the country

which it represents a check which the solemnity of a previous parliamentary vote would but make the more galling to national pride.

The President of the Republic does not only negotiate all treaties by himself, but, in principle, it is his signature alone which ratifies them. There are exceptions for certain matters, which are definitely enumerated in Article 8, paragraph 2, of the law of July 16th, 1875, concerning which the President of the Republic can only give the signature which definitely binds France, *i.e.*, can only ratify a treaty when he has been expressly authorised by the Senate and the Chamber of Deputies.

The wording of the Constitution, however, is faulty; it declares that treaties are only concluded after having been voted by both Chambers; from which it would seem that when the treaty comes before the President the international procedure has already been finished, the act of Parliament being its last step; but this is not the case. A brief of the treaty only is submitted to the Chambers, drawn up by the diplomats concerned, and it does not yet bear the signature of the head of the State. The Chambers' vote has the object of authorising the President of the Republic to give his signature and thus to ratify the treaty.

The principle is therefore, that the President of the Republic on his sole authority negotiates and ratifies all treaties. The exceptions noted limit this authority, but must be strictly interpreted. They comprise treaties of peace, commercial treaties (including the fixing of customs and tariffs, navigation treaties, and so on), treaties engaging state funds, treaties relative to individuals (as regards their judicial capacity, civil and political rights, and nationality), treaties relative to property rights of French citizens abroad, and finally all treaties involving modifications of national territory.

This list has appeared so comprehensive to certain commentators that they have considered that the exceptions outweigh the rule, and thus subject foreign policy practically in its entirety to the direct collaboration of Parliament; but this is far from being the case. Article 8 of the law of July 15th, 1875, in reality dispenses with parliamentary approval for the most important treaties of all; — great political treaties and treaties of alliance. Thus the Treaty of Berlin, April 13th, 1878, one of the most important documents in diplomatic history since it claimed to settle the situation in the Balkans, was constitutionally ratified by the President of the Republic alone. All the great international documents which have marked the course of French foreign policy for the last half century, practically all those which still exert a decisive influence upon the destinies of France, and thanks to which she did not find herself alone to oppose German aggression, have been the work of the Government alone, and have been ratified by the President on his sole authority.

The 1875 Constituent Assembly intentionally left the responsibility for treaties of alliance to the head of the State alone. They considered, no doubt, that public discussion concerning very delicate negotiations, would by its roughness and disregard of fine shades of meaning certainly endanger their ultimate success. Accordingly it is the Government alone which conducts great international politics.

It is not however by direct collaboration in certain treaties that the Chambers can really participate in the general direction of foreign policy. The real control which they possess is an indirect one, and is exercised on the whole diplomatic system. First of all, there is the power of the purse; the budget commission presents the Ministry of Foreign Affairs annually with a report, usually of a weighty character, which often contains a general

résumé of foreign policy. Again nearly every year at the time of the discussion of the budget, the Chamber holds a great academic debate upon the broad outlines of diplomatic policy, in which a few chosen orators take part.

The Chambers in fact possess this indirect control by virtue of the parliamentary system. In reality, and this is true of all parliamentary democracies, "it is only when the barometer points to "stormy" that the Chambers interest themselves in problems of foreign policy"; and then, the infinite number of questions and interpellations is striking; M. Louis Marin made an exact digest of them in his report of July 11th, 1911.

In practice the attributes which ought to belong respectively to the ministers and the Chamber have been strangely reversed. The deputies claim to direct and control administration, with which they should have nothing to do, but they leave the direction of general foreign policy to the ministers. A minister is not free to gather round him collaborators of his own choice, paying them according to their loyalty and deserts; but he can with almost complete independence impose a commercial system in keeping with his own economic ideas, engage France in a system of alliances according to his particular political views, and even decide on a matter of peace or war. There was recently a minister of foreign affairs who followed for seven years with calm and unwavering deliberation a plan of political alliances not lacking in grandeur, but which Parliament too absorbed in more interesting matters (as it thought), did nothing to oppose or to control, asking indeed no more than a few questions about a policy in which the most vital interests of the country were engaged. It was startled, like one waking from sleep, to learn one morning that this policy might involve France in a most serious crisis; it immediately got rid of the man responsible for the policy, which by its silence it had approved for seven

years; and then returned to its labours of internal administration.

The Foreign Minister is in fact the principal though not the only director of French foreign politics; and it is here that the President of the Republic can most effectively exercise his influence upon the choice of ministers. The memoirs of M. de Freynicet tell what "incomparable aid" M. Grévy lent his ministers in the most delicate situations. Celebrating the conclusion of the Russian Alliance, on the *Pothuau*, at Kronstadt, M. Méline pointed out for recognition by the country "the personal and decisive action of the head of the State," M. Carnot; and it was in the solemn words of President Félix Faure that the country learnt that the Alliance was an accomplished fact; but the head of a Parliamentary State occupies himself but rarely with the details of diplomatic relations. He confines himself to keeping an eye upon their general direction, leaving the effective control to the Foreign Minister. Under this method, as has been already mentioned, M. Delcassé carried out his personal conception of French foreign policy for seven years; it concerned itself with re-establishing a European balance of power in the face of Germany's attempt at supremacy, and with extending the French colonial empire, especially in the North of Africa; afterwards he was bitterly reproached by some for having behaved almost like a dictator, and for having pursued this policy, good in itself, without informing Parliament, the President of the Republic, or even his President of the Council, M. Combes (from 1902-5); but may it not well be argued that these various constitutional authorities ought to have shown a livelier curiosity, when occasion offered.

A democratic *régime* would seem necessarily to involve in principle the publication of all proceedings, all decisions, in a word, every action, accomplished in the name of the

State or of its departments. Democracy in fact connotes control, and there can be no control without publicity.

The actual arrangements are as follows :—

While negotiations are actually taking place, it is recognised, at any rate in principle, that the Government is not obliged to make them public. Diplomacy of this kind has often been compared to a game, in which it would be absurd to force one of the players, democratic France, for instance, to play with her cards on the table while the rest kept theirs hidden.

In point of fact the Government keeps the public informed of its negotiations according as it thinks compatible with the general interests of the country and its own prestige. The means of publicity it uses consist of :—

1. Communications given at its pleasure to chosen journals or favoured agencies ;

2. Declarations to the Chambers either in Committee or in public session, the Government either making a spontaneous declaration or replying to an interpellation.

3. Outside parliamentary circles the Government can inform the country directly by one of the numerous recognised methods,—a ministerial or presidential speech, or a toast at a banquet.

4. The great official vehicle of publicity for diplomatic documents is the Yellow Book. In this book (which has a yellow cover) the Government publishes such documents as it thinks judicious on any particular matter, at any time it thinks fit.

There is no graver or more pressing problem than whether the country can be bound by a treaty known only to the Government, neither the country nor Parliament being informed of it. It involves a question of legal right and a consideration of general principles.

On the ground of legality it cannot be denied that the President of the Republic does possess the right to conclude secret treaties, "The President of the Republic," declares Article 8 of the law of July 16th, 1875, "shall negotiate and ratify treaties. He shall inform the Chambers of them as soon as the interest and safety of the State permit." Evidently the secrecy provided for by the Constitution is in principle only temporary; but the head of the State is left free to fix the length of time that negotiations shall remain secret.

But the question arises whether this presidential prerogative is in accordance with democratic principles. It is necessary first of all to come to a definite agreement about these principles. There is a lot of wild talk in my opinion about the will of the people. It is said that the will of the people must prevail in international politics; if that is so, the necessary legal power should be given them by means of a referendum, a general vote open to all sane elements of the nation. Yet such an extreme measure is not demanded by even the most resolute opponents of secret diplomacy; and the most democratic country in the world, Switzerland, has not as yet ventured to submit treaties to the referendum. Moreover the so-called people whose will is in question has become nothing more than the fiercest and rowdiest part of the nation; at the most it is a more or less shifting public opinion which each one interprets as he pleases, and in whose name certain individuals take upon themselves the right to speak.

Everybody recognises that the direction of foreign policy must be entrusted to representatives; it is admitted that Parliament is the representative of the people for the object of legislation, and that the Government is its representative for the work of internal administration. The problem resolves itself therefore into determining the constitutional organ most fitted to represent the people in

the direction of foreign policy; after that it becomes a question of political craftsmanship and constitutional organisation.

To begin with, history provides precedents in favour of secret diplomacy. France's greatest democratic assembly, the Convention, was determined to renounce all dogmas and abstract principles of so-called logic in order to follow the imperious precepts of reality, and it accordingly allowed the executive to have secret negotiations and understandings; all the later constituent assemblies followed the Convention in this, with the exception of the 1848 assembly, whose institutions all proved abortive. It was thanks to secret diplomacy that France recovered from the state of isolation and weakness in which the disasters of 1870 had left her, by means of the Franco-Russian Alliance, the Entente Cordiale, and the friendly attitude to Italy.

In the present state of world politics and for an indefinite future, it would certainly be dangerous to deprive the Government of the Republic of the power of concluding secret treaties, although it be admitted that the ideal is to suppress them. They should be banished entirely from international relationships, were it possible to reconstruct those relationships from their foundations; but reduced to those terms the problem becomes a mere *jeu d'esprit*. The only problem worthy of consideration is that of finding out, given the state of the world, and in particular that of Europe, what system will best permit France to defend her interests on the continent. For she is living in a world which shows no intention whatever of putting an end to secret treaties. We are still far from knowing all the clauses in the treaties by which the Bolsheviks, who claim to carry out the purest democratic doctrine, have delivered Russia into the hands of Germany. Against the network of secret treaties which threatens to envelop her,

France must be able to defend herself if necessary by other secret treaties.

"Democratisation of diplomacy" is on many counts a formula devoid of sense. False analogies between internal and foreign politics must not be allowed to veil the real issue. It is perfectly true that a great number of the abuses and faults of an older age have been cured simply by an extension of liberty and democratic principles; but in this case we are not concerned with questions of good and evil which can be solved by such means of publicity and democratic control. What is needed above all for the solution of diplomatic problems is a profound knowledge of the circumstances and facts in which they originated.

The accumulated experience of nations has so far proved that it is the executive power which can best represent the people in international relationships.

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Chapter IX

ADMINISTRATION

The administration assures the daily life of the State and its departments by the functioning of public services.

The outlines at least of French administration are still those of Napoleon. The Emperor fashioned his institutions in such a way that his sovereign will should be felt without delay or hindrance at every point of France, and in 1875 this edifice of personal authority was crowned by parliamentary democracy. The whole is, from certain points of view, a somewhat heterogenous construction, not without serious defects, since the inheritor of Napoleonic authority is not always the President of the Republic nor even the Government, but too often the district deputy; with the extraordinary result that the instruments of power once used by a personal authority, on whom rested in default of all other responsibility at any rate a moral one, have passed into the hands of an anonymous and irresponsible authority. The nation is thus in danger of suffering from the disadvantages of despotism without enjoying the compensations of order, technical efficiency and good administration, things which such a *régime* attempts at times to barter in exchange for political liberty.

However, it must be understood that this is but to put the matter broadly. For while conserving the framework and nomenclature of imperial administration, France has gradually introduced a great deal of freedom in a series of reforms spreading over the last hundred years. Moreover, in pointing out a danger spot we do not assume that democracy will always and necessarily fall into it. By a

natural and, as it were, spontaneous division, the interests to be guarded are separated into two classes; the general interests of the state, and the particular interests of groups of inhabitants.

Administration of the General Interests of the State.

This administration requires a central department for the initiation of plans, and agents on the spot to carry them out.

There is a minister at the head of each of the departments into which the 900,000 French civil servants are divided. These civil servants are of two kinds, executive agents spread over the whole country, and members of "bureaux," a division which M. Haurion has ingeniously compared to that of combatants and non-combatants, the latter directing the former.

The Bureaux are in immediate contact with the ministers; their staffs are stable and permanent, thus ensuring the continuity of administrative action. The majority of French officials remain in office during the changing of cabinets, and even during the overthrowing of one *régime* for another. The system by which the victorious party "divides the spoils" is happily unknown in France. Chateaubriand, visiting a prison as a minister was met by a gaoler with the cheerful greeting: "It was I who once had the honour of incarcerating your Excellency." It is due to this solidity of her administrative framework that France has successfully weathered so many storms.

The Bureaux are of very much the same composition in all departments, comprising directors, divisional heads, office heads, copying and forwarding clerks, (*rédacteurs* and *expéditionnaires*), door-keepers, office boys, etc. But there are no general rules applicable to the administrative

staffs of all departments; or rather there is but one, established by the law of December 30th, 1882. The formation of the staff is not left to the whim of any temporary minister, for the central organisation of any ministerial department can only be authorised by a decree of the President of the Republic, issued after the approval of the State Council. Nevertheless, while each department has its own system, common usages tend to establish themselves, such as that of the recruiting of clerks by means of a competitive examination. This rule, however, is not absolute; in the same department it is sometimeso bserved, sometimes disregarded.

All departments have one thing in common—extremely low salaries, especially at the commencement; the candidates must hold a diploma of higher education, which implies considerable expense, and they are offered as a reward for success in the examination, a situation remunerated at the average salary of five francs a day. Already, before the war, the departmental examinations were deserted, and now the recruiting of these staffs, which has been readily criticised, but which is, none the less, indispensable, remains one of the innumerable and most disquieting of post-war problems.

It is difficult to exaggerate the supreme directing importance of high permanent officials in the ministerial departments. The Director of political affairs at the Quai d'Orsay must know all the external staff, follow at first hand all negotiations, and be to the minister both a walking dictionary of facts and an exceedingly tactful counsellor. It is he who carries on, often anonymously, the tradition of diplomacy and ensures its continuity and unity.

But rarely during the Third Republic were ministers of Public Instruction satisfied to find themselves head of that department, and eager to consecrate the best part of their activities to the great work of national education;

yet a scholastic policy worthy of great praise was pursued during the whole of the Third Republic; and it was the work of "M. Lebureau." The honour for progress realised in higher education belongs to a small and rare band of men; since the fall of the Empire, the directors of this great work have not numbered more than half a dozen. From 1879 to 1884, Albert Dumont was at the head, himself a former official under the Empire, an archeologist, and *membre de l'Institut.* Since 1884, it continued under the long and brilliant direction of Louis Liard, philosopher and *membre de l'Institut,* who retired at the end of a quarter of a century but to continue his work as the Vice-Rector of the Academy of Paris, a post in which Gréard had deserved the title given him by some, of vice-minister. These are but a few types of the great technicians upon which the political actions of Ministers depend.

Such officials of central administration the minister has directly to guide, enthuse and control. But what is the situation of the minister, obviously a merely temporary official amidst these rapid political changes, yet placed at the head of such an organisation which has all the permanence and force which the contrast with his own situation can give it. He is in danger of being isolated and powerless. The parliamentary minister is deputed by the public and the Chambers to keep an eye on the administration; in this work of surveillance, he cannot count on being helped by the important permanent officials, since there would be no real control if the bureaucracy controlled itself. The minister must therefore have personal collaborators to assist him, entirely of his own choice, and on whom he can rely absolutely, to point out to him what abuses he should remedy and what reforms he should strive for. These immediate collaborators who surround the man entrusted with the direction of a ministerial department form what is known as a *cabinet.*

A minister has complete freedom in the choice of his collaborators, but actually the Court of Accounts and especially the State Council offer him a nursery of eligibles upon some of whom his choice generally falls. The *cabinet* has but a *de facto* existence; it is neither defined by the Constitution nor by the Law; but the latter recognises it indirectly by attempting to limit its abuses. While no one would venture to attack this institution on the ground of its utility, which is indisputable, it can be criticised on the score of its abuses, since a Minister expresses his gratitude to collaborators by means of administrative favours. The *cabinet* thus tends to become "a privileged and favoured plot of ground in the midst of a democracy, a hothouse for the premature forcing of budding statesmen." A young man unsuccessful in the examination which is the normal door of entry to one of the great State departments will pass into a *cabinet* and from there manage to get transplanted into a State Department in a superior situation to that of his successful fellow competitors. Out of thirty-eight Parisian tax-collectors (*percepteurs*), twenty-seven passed through such *cabinets*. Such a passage is often an easy way either of obtaining coveted offices without previously holding subordinate posts, or of passing over the heads of less favoured colleagues.

The State Council acts as a technical adviser to the Government and as a regulator of administration.

This great body is one of the most remarkable cogs in the French administrative machine. It is a Council of legal advisers and technical experts, who assist the government in the solution of the most important problems of general administration. By itself it decides nothing. Acting side by side with the President of the Republic it personifies wisdom, experience and the science of administration. It is to this body that the government addresses itself when it requires impartial and enlightened counsel,

disassociated alike from electoral interests, from party passions and from political considerations. The State Council is an instrument of government, which like others dependent upon efficiency, tradition, and stability, succeeds in welding the framework of French administration together, and working in the background, all unperceived by the mass of the public who only notice superficial disturbances, fortunately counterbalances the instability and incompetence of democracy.

Similar institutions might obviously be found in other countries and under the *ancien régime*. The State Council derives directly from the King's Council, which itself developed from the *Curia regis;* but in its present form the State Council is a creation of Napoleon. Under an administrative monarchy the State Council must have held a place of prime importance; it was the favourite constitutional body which the First Consul created; and Napoleon not only presided at a great number of its deliberations, but surrounded himself with State Councillors and entrusted his most important missions to them.

The Second Empire endeavoured to follow in his tracks and compensate the suppression of political liberty by capable administration. While the Senate was to contain "*all* types of the country," the State Council was to be composed "of the most distinguished men." One of the numerous blunders of the National Assembly was to tarnish albeit but slightly the lustre of this great institution; that is if one may argue from the slight but material fact that it reduced the salaries of State Councillors from 25,000 to 16,000 francs. It is difficult to explain why they should only receive 16,000, when both Councillors of the Court of Cassation and of the Court of Accounts get 18,000; again the President of a Chamber in the latter Court gets 25,000 francs per annum, whereas the President of a section of the State Council must be content with 18,000. However,

legally the Court of Accounts is subject to the control of the State Council, a detail which is, perhaps, not so insignificant as one may be tempted to think.

It is very properly desired that the State Council should contain men of the widest administrative experience, but a general director at the Ministry of Finance appointed to the State Council will hardly appreciate to the full the honour which is done him, since he pays 9,000 francs a year for it; so that for certain such officials, to be appointed to the State Council is a kind of honourable misfortune; and under these circumstances a man does not enter the Council with the best spirit for whole-hearted public service.

Members of the State Council are divided into two classes; at the head, State Councillors, who take decisions in the name of the whole body; then come Masters of Requests (*i.e.*, recording magistrates) and auditors, who prepare the matter for such decisions by previous examination and reports. The Council is divided into five sections, one for the judgment of administrative actions (see next chapter), the four others for the examination of administrative affairs. Each section has at its head a sectional president. Theoretically the Minister of Justice is the President of the State Council; consequently, the man actually elected as head of this body takes only the title of Vice-President. This is but a pretence, similar to that of giving Ministers of Public Instruction the title of Rector of the University of Paris.

One of the factors which have helped to maintain the prestige of the State Council is that it is recruited from the bottom by means of a competitive examination; among other advantages this attracts young men of distinguished intelligence and independent character, who are averse to making a career for themselves by intrigue or personal favours. To be admitted among the twenty-two auditors of the second class, the candidate must have

succeeded in a very difficult examination, which is generally taken at about twenty-five years of age; he then draws a salary which has been recently raised to about three thousand francs per annum; at the end of eight years he must be appointed first class auditor; failing which, he leaves the Council. This is an effective rule for excluding idlers. The eighteen first class auditors draw a salary which has been recently raised to 5,000 francs, and 6,000 to the nine senior men. Towards thirty-seven years of age the auditor may be appointed one of the thirty-seven Masters of Requests with a salary of 8,000 francs; two such magistrates out of three must be selected from first class auditors. Finally, towards his fiftieth year the Master of Requests may be appointed State Councillor, these high officials being forty in number. One out of every two State Councillors must be selected from Masters of Requests. The minimum legal age for promotion to Master of Requests is twenty-seven, and thirty for State Councillor.

Apart from the rules which fortunately preserve the rights of auditors and Masters of Requests, the Government is free to appoint a Master of Requests or a State Councillor without any condition of ability. Actually, the great majority of State Councillors coming in from outside are former prefects.

Such a career, it may be noticed, is usually very slow, and the material advantages insignificant. However, right up to the last years before the war, the State Council continued to attract the young and talented from the ranks of the well-to-do, by reason of the competitive examination, the advantage of residence in Paris, the social prestige of the office, and perhaps the ambition of branching out into high public office or even in the direction of large private enterprises. But at the present time, there is a generally increasing tendency, even in the highest ranks of the administration, for the official to demand a living

wage—a horrible shock to the old, traditional ideas. He wants to receive a salary, not merely a remuneration constituting a more or less welcome addition to his private income. At the last examination for auditors (it was certainly still in wartime), there were four candidates for four places—a sad and disquieting state of things!

It was feared that the active administration might distrust this great body, and hesitate to seek the advice of such an annoying instructor. The law accordingly made the consultation of the State Council obligatory in a number of cases. The State Council examines each year as an adminstirative council about thirty thousand cases, twenty-four thousand concerning civil and military pensions, the rest concerning new territorial limits, the creation of institutions such as tribunes of commerce, councils of "prud'hommes," chambers and banks of commerce, mining concessions, the superior control of departmental and municipal administration, etc.

One of the most important duties of the State Council concerns the drawing up of "rules of public administration." Parliament is too unwieldy, and on some points is not really competent to decide the minute details of a new set of regulations; hence many laws confine themselves to stating principles, leaving the details to the "Rule of Public Administration," it being understood that the President of the Republic can only draw up this rule with the advice of the State Council. In point of fact, a few extremely delicate rules have been entirely revised by the Council, and the Head of the State's task has been simply to make them valid by his signature.

Now it must be noted that the advice of the State Council is always optional and secret.

It is optional, in that the Government is sometimes obliged to take it, but is never obliged to follow it, There have been cases when the Government consulting the

Council according to law, obligingly warned it that its mind was made up, and that the advice asked for would have no effect upon it. Secondly, the advice given by the State Council is always secret; the decree mentions that the "State Council has been heard," but it does not indicate in any way whether it supported or opposed the decision actually adopted. It would seem but a small thing to ask that the advice of such an enlightened body should form part not only of the ministers' secret *dossier*, but of the public record of Parliament and of the nation; it would be sufficient that decisions taken should bear the words: "confirmed by" or "contrary to the advice of the State Council." The country would thus be able to judge the truth of the matter and would know where the responsibility rested.

We have, however, only considered the State Council from one aspect; in the next chapter we shall see that as the supreme administrative tribunal of law and order, it is the great protector of the liberties and rights of the individual.

The official bodies we have noted so far are all situated at Paris in close contact with the minister; they do not take any direct action, but confine themselves to co-ordinate, to direct it from above and from a distance. The officials of the Ministry of Public Instruction do not teach; those of the Ministry of Public Works do not repair roads; those of the Ministry of Commerce do not deliver letters, those of the Ministry of Justice do not act as magistrates, and so on. There is a whole body of executive agents spread over the territory, whose activity ensures the working of public services.

The limits of the territory in which agents have to work often coincide with one of the divisions of general administration, which still remain those as settled by the Constituent Assembly, with some slight modifications by

Napoleon. The Assembly wishing to destroy the old anti-national feeling in the provinces, took these very provinces as the basis of a new division ; it cut each one of them up into a number of departments, all approximately the same size, each receiving a name in accordance with some geographical peculiarity. Every borough was divided into a certain number of districts, which becoming slightly fewer and consequently somewhat larger, took by the law of twenty-eight pluviose, year VIII., *i.e.*, February 28th, 1803, the name of arrondissements, which they still hold. Each arrondissement contains a number of cantons ; and from that one comes to the last administrative division, the commune, a unit spontaneously formed by the march of events, the Revolution first and later the Consulate plainly recognising the existence of the ancient parishes and suppressing only those which were too tiny to admit of real local life. The number of these various divisions has naturally varied according to the modifications of French territory ; in 1918, there were eighty-seven continental departments, those of Corsica included, with Belfort and three Algerian departments in addition ; 362 arrondissements, 2,911 cantons, and 36,222 communes.

The department, its multiple and sub-division, naturally form a framework for the local organisation of public services. In very department there is a superior agent for several of the technical branches ; a head agent of Public Works (i.e. head engineer of bridges and highways), of postal services (departmental director), of public instruction (school inspector), of financial administration (paymaster general, director of registration). Certain superior agents have a group of several departments under their authority ; in military administration this group is known as a *region* with a commandant at its head ; in the administration of public instruction it is an academy with a rector ; in judicial administration, a *ressort*, with

an appeal court directed by a first President and a Procurator General. In the metropolis there are twenty army corps, twenty-five appeal courts and sixteen academies. Other officials perform their duties within the sub-division of the department, each arrondissement possessing its law court, and its own general rate collector, etc. The arrondissement served until recently as the constituency for the election of deputies. Each canton has a Justice of the Peace, a rate collector and a commissioner of oaths ; each elects a member of the general council which administers the department. Thus the whole political and administrative life of the country is built up on the same framework, and is subject to the same rules all over France ; this complete uniformity as opposed to the diversity of the *ancien régime* has had much to do in the formation of national unity.

It may be asked, however, whether this absolute uniformity, undoubtedly of great service in the past, has not played its part. For certain public services France could very well be divided into six districts, for others into twelve. It is perhaps unnecessary to have at the head of every department a chief engineer, and a paymaster. On the whole it is possible that by a wiser arrangement of administrative posts, simplification, economy and greater efficiency might be obtained.

We are about to consider the principle obstacle to such a reform ; Napoleonic legislation made use of the departments in order to break up the unity of the great technical services of the nation, and thus ensure more certainly the intervention of an essentially political agent, namely, the prefect.

The prefect, a political agent, predominates over technical agents, everyone of whom represents a special authority, such as a ministerial department or sub-department. That was as far as the Constituent Assembly had

gone ; but that great organisation which had given birth to a new social order could not infuse a political or administrative system with life ; its attempts at organisation in these two spheres really produced nothing but organised anarchy. Napoleonic centralisation could not permit such a dispersion of power ; the first Consul determined that there should be a direct representative of his supreme executive power in every district to control all technical agents ; the prefect is this direct representative. The name was borrowed by Siéyès from the old Roman official of that name.

There is a prefect at the head of each department ; he has under him a prefect's council (*conseil de préfecture*), which in theory is called upon to play, in the narrower limits of the department, a part similar to that of the State Council in the whole country ; in practice, prefects' councils are composed of three or four members, who must hold the Diploma of Licentiate in Law, yet are absurdly underpaid (2,000 to 4,000 francs per annum), and without any hope of advancement ; such councils are deprived of any dignity or real power, and act simply as administrative courts of law. (See next Chapter.)

The prefect is assisted by a general secretary, who attends the prefecture in person, and fulfils the duties of public minister in the prefect's council acting as a court of law ; the prefect has in addition sub-prefects under his direct orders, each one placed at the head of an arrondissement.

Prefects are some of the highest paid officials, their salaries varying from 18,000 to 35,000 francs per annum ; moreover, they are lodged in palaces, whose upkeep the State has imposed upon the Department, and they are reimbursed for expenses incurred in their official position. They are appointed by the President of the Republic on the recommendation of the Minister of the Interior, who is their direct chief.

They are essentially political agents whose business it is to support and spread the opinions and wishes of the Government throughout the whole administration. Consequently, no special standard of ability is required of them, and since political aptitude is not measured by diplomas the Government's liberty of choice is complete. In fact what is required of a prefect is not technical competence at all, but obedience, tact, and the conformance of his actions with the policy and will of the Government; so that a prefect may be justly dismissed, not on account of any fault, but simply by reason of a disagreement between himself and the Government which he represents.

From the very nature of the prefect's office it follows that no guarantee can be given him against being replaced or dismissed. He can but depend upon the general rule laid down in the Finance Bill of 1905, that officials cannot be dismissed without a full report or *dossier* being communicated to them. The law did not wish the right of dismissing prefects to be limited in any way; the Government need not consider, for instance, that it is hard to dismiss a man who has had sums deducted from his salary in view of a pension which he will now never receive, since prefects at the age of sixty can draw a pension without any previous deductions; the Government must not be paralysed by humanitarian considerations. Absolute dismissal of a prefect is rare; he is usually retired to the State Council, to the Court of Accounts or to some public office. But the Government must still be able to get rid of a prefect even if it has no other position to offer him; to meet this case, and in order to avoid absolute dismissal the prefect can be declared unattached, receiving a salary of six to eight thousand francs.

The prefect is thus first and last a political agent, and consequently is appointed at the will of the Government, and dismissed at its pleasure. A change of ministry is

generally followed by a re-arrangement of prefects, while a complete change of policy is accompanied by an absolute massacre of them.

This political agent, appointed and dismissed for political reasons, dependent upon the ministerial department most vitally concerned with questions of policy, represents not only the Ministry of the Interior, but all other ministries as well. Within the limits of his Department he personifies administrative authority, and possesses the power of deciding matters and appointing executives. The prefect does not confine himself to directing, surveying and managing penitentiary and charitable institutions, which are under the Ministry of the Interior, though they might equally well be respectively under the Ministry of Justice and the Ministry of Social Work and Protection ; he does not confine himself to acting the part of political watchdog upon officials of all kinds, magistrates, schoolmasters, officers, and drawing up a more or less secret and exact report on everyone of them, nor even to keeping an eye on the general police and the maintenance of public order. In addition he takes decisions upon numerous technical matters and appoints a large number of technical agents.

A citizen, for instance, about to build close to the public highway wants to draw water from the main conduit. Who is the technical authority competent to judge the limits of the highway and those of private property ; and to decide whether such permission will be prejudicial to the public services and the general supply ? Obviously the authority in charge of bridges and roads, that is, the agent, who is at hand, can see the place, and is consequently the best informed ; subject to the control of the head engineer, he might well decide ; as it is, the prefect alone can decide; and the business is certainly not carried through more quickly or more impartially as a result. If a man wishes to build on land immediately adjoining the

sea for a length of twenty-five yards, he must apply for a *delimitation*, which will usually take a year, sometimes four, if there are difficulties, negligences, or errors in transmission ; competent officials, who alone are on the spot and can make a personal inspection have not the power of decision. Such an administrative system places control upon control ; errors are rare, miscarriages of justice, exceptional ; but at what a price !

Who is to judge if an applicant is suitable for the work of road-mending, if not the technical official in charge of roads ? Yet it is not he who appoints such workmen, but the prefect. But above all, who can judge whether a roadmender does his work well, whether a postman delivers his letters properly, whether the head of an institution fulfils his important office with tact and zeal ; obviously it is the technical superiors of these people ; yet it is the prefect who is in charge of the appointments, dismissals, and promotions of these various official executives. In every department, the prefect appoints hundreds of inferior officials, in the postal, bridges and highways, and financial services ; but what a State Councillor has called a veritable " monstrosity " is that the prefect appoints heads of institutions and can consequently transform them into electoral agents.

Finally to come to the last item of the prefect's power, he is not only a political and administrative agent, but also a judicial one. He can " personally make and require the officers of justice to perform all necessary acts with the view of determining crimes, misdemeanours and contraventions of the law and of bringing their authors to justice." These are the terms of the famous " Tenth Article " of the criminal Code of Instruction, whose abolition has been agitated for by every opposition since the fall of the Empire, but which Governments have so far maintained. It gives the prefect the powers of an examining judge

(*juge d'instruction*). If it is a defect in our legislation, it must be stated that it is essentially theoretical except for the prefect of police in Paris ; in this formidable mass it is perhaps an element of order. A circular of M. Clemenceau's of August 4th, 1906, forbade prefects ever to use Article 10 without previously referring to the Minister of the Interior.

The prefectoral institution, as it has just been described, was in entire and logical accord with the Napoleonic *régime*. All had to be built anew or re-fashioned after the anarchy of the Directorate ; the prefect was accordingly a sort of *missus dominicus*, who had to have all public services in his hands, in order to organise and harmonise them, for without telegraph or railway, he could not refer to Paris for instructions.

The prefect was his own master ; and it would be interesting to follow in this connection the efforts at reconstruction of a prefect like Pasquier in the district of the *Seine-Inferieure*. The Prefect had, moreover, to answer for the loyalty of the department to the Emperor. To sum up, the Empire was an administrative monarchy, whose interest was to provide good administration. The prefect was an effective administrator, exclusively responsible to the Home Minister, who, in his turn was responsible to the Emperor, who was responsible morally at least to the country.

Transferred from the machinery of an administrative monarchy into that of a parliamentary democracy, the cog does not work without friction and jolting. A new factor has come into play—the district deputy, master of ministers. The President being effaced, the minister personifies all real power, but the deputy controls the very existence of the ministry. Hence the mutual barter : *do ut des :* " I will see to it you keep your portfolio ; make me certain of my seat ; reserve administrative offices

and favours for those who vote or promise to vote for me." And it is the prefect who disposes of petty bribes in this matter. Hence members of Parliament are accustomed to assume a dominating position at the prefectures and control all nominations even if they do not dictate them. Hence so many citizens never apply directly to the prefect for any authorisation, such as permission to shoot rabbits, for instance, without first going to a deputy. The prefect is always playing see-saw, not knowing to what extent he should defend the general interest against the claims of deputies; for he can never be certain that the Minister, threatened by a lack of confidence, will not abandon him.

This is evidently far from being the usual condition of things; there is no doubt that professional ability is rewarded in a regular manner in most professions; there have been and still are "great prefects": there are ministers who support them, as witness the famous circular of 1882 in which Waldeck-Rousseau reminded the prefects of the principles of the separations of powers. In the words of Gambetta, "this is a condition of things which is at its beginning."

It is always easy to find "some soul of goodness in things evil." Technical officials do not themselves desire to possess the power of decision, which would certainly make them the target for imperious demands on the part of members of Parliament. At the moment the prefect stands between them as a buffer state; sheltered by his authority they succeed in performing their useful work in the background. They do not ask to appear in the limelight. But from these very admissions it follows that we live under a system of general irresponsibility. Every great technical official must be given a feeling of his responsibility, position and duty towards the nation. Their independence will be increased by the development of that collection of guarantees known as the "Statute."

We have seen the results of transporting this element of Napoleonic Government into a democratic *régime,* but it does not follow that it should be ruthlessly destroyed, since governments of various kinds will always have some needs which are the same. The prefectoral institution is an instrument of co-ordination, order and government of which no one wishes to deprive the public. But it is not above criticism ; there is not a journalist, not a single deputy, who openly maintains that heads of institutions should be appointed by the prefect, and should not come under the natural authority of the rector. Most important of all the Government should be strengthened in order to support prefects against the claims of members of Parliament, when such claims appear to be inspired by selfish interests and contrary to the common weal. (*Cf.* Chapters VI. and VII.)

The Administration of the Particular Interests of Local Groups.

The various elements of national unity are much too closely bound togther to permit the idea of interests belonging exclusively to any one group of citizens ; keeping this in mind, however, one can yet see that there may be certain interests which concern more closely a particular group of citizens ; so that while, on the one hand, military service and the administration of justice are obviously essentially national concerns, so on the other hand, roads which do not go beyond the limits of a department are the particular concern of that department, and well-kept streets, beautiful promenades, lighting, the regulation of markets, the establishment of public laundries are the particular concern of each town.

The framework on which the administration of local interests depends is substantially the same as that on

which depends the administration of the general interests of the State, which has already been described. France is divided into departments, the departments into arrondissements, the arrondissements into cantons, and the cantons into communes. These divisions may be examined at greater detail.

The department is something more than simply an administrative district; it is what is legally known as a legal being (*personne morale*). It possesses inherited property, passes a budget, levies taxes, contracts, buys, sells, acts as creditor and debtor, sees to the upkeep of roads and buildings, supervises institutions, etc. In law free will is all important, and the organ by which the department expresses its will is the general council.

Every department has such a body composed of members elected one from each canton by general vote, for six years, half the council becoming open to election every three years. A man cannot become general councillor of a department unless he possesses certain property in it; theoretically he should have his dwelling there, but as many as a quarter of the members (known as "*le quart forain*") may simply be registered as ratepayers. According to the spirit of the law, elections to the general council must not be political elections; men must be chosen less on account of their opinions than of their ability to administer the particular interests of the department; now to administer such interests one must know them, and to know them one must belong to the department. This legal doctrine is, however, completely disregarded in practice.

The general council sits twice a year, at Easter, starting the second Monday after Easter, and until 1907 in August, starting the first Monday after the 15th of the month; but since that date the general council has been permitted to fix the date of the second session itself. Consequently, in practice the general council sits for less than a month

in the year, and for eleven months the department used not to be represented, the prefect being able to carry on the administration without control; to put an end to this the National Assembly, which included many general councillors in its ranks, instituted the *departmental commission*, by the law of August 10th, 1871. This is a kind of delegation comprising from four to seven general councillors chosen annually by their colleagues, and capable of exercising an almost permanent control, since it is required by law to meet once a month. On this point, the law has gone beyond the people's wishes, and so in practice many departmental commissions meet towards the end of the month for a single session lasting on to the first days of the next month, and thus obey the letter of the law but not its spirit. The departmental commission is a very important institution from the point of view of local liberty; as M. Waddington said in his report on the great law of August 10th, 1871, "The departmental commission is the whole of the law."

Of all French institutions the general councils give some of the best results. They cannot be said to comprise the *élite* of the nation, but the *élite* of a little local, political world; a man once elected to the general council will generally remain there for many years, supported by no blaze of popularity but by a deeply founded esteem and affection. They are calm and hard-working assemblies.

The whole body of general councils forms a varied and multicoloured image of France in her entirety, perhaps a more exact image than that given by Parliament: the consultations of the general councils on great political, economic and fiscal questions have thus a particular significance. Moreover, most members of Parliament make every effort to combine their legislative mandate with a seat on a general council, which enables them to strengthen their hold on their constituency. In February, 1919, for

instance, out of eighty-six general councils, the Seine and the three Algerian Departments excepted, sixty-three were presided over by members of Parliament, of whom thirty-seven were senators and twenty-six deputies ; eight ministers were general councillors, and four ministers and two under-secretaries were presidents of those assemblies.

The department has many and very varied activities. It must provide funds for the construction and upkeep of buildings to house the great public services, comprising *prefectures*, law courts (*palais de justice*), prisons, and police stations (*gendarmeries*). These are expenses which should really figure in the state budget, and although removed from there the taxpayer does not pay a penny the less. General councils are not eager to pay for such expenses which are certainly not departmental, and when, for instance, the question of prison reform comes before Parliament the legislature is checked by the *inertia* of the departmental assemblies. Strictly departmental matters concern the upkeep of roads, hygiene and poor relief.

It is the upkeep of roads and the preservation of public buildings that primarily affirm the civil personality of the department ; by the two decrees of April 9th and December 16th, 1811, Napoleon made a free gift to the departments of buildings, law courts and police courts, and third class national roads. It is not difficult to guess what this munificent gift actually amounted to ; it obliged the departmental coffers to find the funds for the upkeep of the public property thus bestowed.

The general council also controls the departmental railways and tramways. Questions of road traffic are very important in the French countryside.

The law of January 15th, 1902, charges the general council with the hygiene of the department.

Finally, the general council has a very important charitable work to perform, which is partly optional, in

so far as the law of August 10th, 1871, allows the general council complete freedom in the matter of poor relief and partly compulsory since it is in duty bound to relieve lunatics, orphans supported by charity, sick persons in want, the aged, infirm, and those suffering from incurable diseases.

In forming the new departments the Constituent Assembly did not chop up the old provinces haphazard; but wherever possible took into account any historical, economic, or geographical ties; and where in some places the new unity was at first but nominal, customs since continued for over a century have made it real; the department has become a living unit in the formation of France as a whole; and with it has come a departmental patriotism. The result of modern means of communication, however, has been to make the department seem a much smaller division than when it was first created.

Moreover, certain services are evidently cramped by the departmental framework, the so-called local railways, for instance, which, it is to be hoped, will be co-ordinated beyond the departmental limits; doubtless, understandings between departments are possible, but they involve delays, differences and errors; a working system cannot be established on a sufficiently large basis within the limits of a single department. The local railway ought to be designed, controlled and run by a larger division than the department, one to which a name has already been given, the *region.*

The department is again too circumscribed for a satisfactory organisation of poor relief; several departments have no lunatic asylums, and departments with over dense urban populations send their charity children into the country in neighbouring departments. The departmental officials are too close to the people to be completely free to take decisions which should be inspired solely by the

general interest. Besides, such dispersion of effort obviously precludes the advantages of concentration.

One establishment of eight-hundred beds is better than eight hospitals with one hundred beds each, in that it permits every patient to have the best specialists, the best nursing, and the best systems of isolation for infectious cases. Such establishments should be in charge of the region. Be it noted here—the terms will be dealt with later—that one can support the formation of regions without supporting decentralisation, *i.e.*, one can maintain that the actually existing amount of liberty should have free play in a larger sphere. Regional organisation could be superimposed upon the departmental organisation, always provided that the latter were simplified, otherwise, of course, it would but create further complication.

The arrondissement represents, as also does the canton, a hitherto undeveloped germ of local government. It was created in the year VIII (1799), under the name of an *arrondissement communal*, for the purpose of grouping the communes together, and giving life to robust local institutions ; but this plan was frustrated by the excessive pride of the communes and their desire for autonomy. It is remarkable, however, that the arrondissement though without any local life, yet retains the organs of local life. At the head of every arrondissement there is a sub-prefect, and also an arrondissement or district council composed of at least nine members, elected by universal suffrage for six years, half of them being renewable every three years, and each canton electing one member. (The more populous cantons elect two if necessary to make the number up to nine.)

This body has but nominal duties ; it used to be charged with the division of the general tax among the communes, but this was actually done by the general tax collectors, and the recent reform of taxes has removed even this

nominal duty. It can defend the interests of the arrondissement by protests or votes.

District councillors have, however, certain personal distinctions. They can on occasion take the place of the sub-prefect (in signing permits to shoot game, for instance), they sit on military appeal tribunals, but most important of all, they have the right of electing senators ; but this is all: the arrondissement has no budget and consequently no institutions. Such assemblies could be abolished without leaving any gap in the national life ; and they could be abolished by an ordinary law, for since 1884, the election of senators has ceased to come under the rule of constitutional law ; but the reform is not urgent ; the title of district councillor costs the nation little and gives pleasure to a great number of citizens.

The arrondissement would be as little missed considered as a division of general administration ; the abolition of sub-prefects has long been agitated for, since they are actually little more than political and election agents, whose administrative duties are confined to being a kind of "letter-box," a "go-between" from the people to the prefect.

The arrondissement is also used as a district within which certain administrative officials carry out their duties. Every arrondissement has its rate collector (*receveur particulier*) and most important, its primary law court (*tribunal de première instance*). To preserve this uniformity the arrondissement of Barcelonnette, numbering less than fifteen thousand inhabitants (14,312,) had to have its law court just the same as the arrondissement of Toulon, which numbers nearly two hundred thousand (196,133) ; and since all arrondissements send a representative to the Chamber of Deputies, it follows that this body will support even their most extravagant claims, and consequently forms a natural obstacle to reform.

In the same way the canton is a division of territory by which the territorial authority of certain State agents is limited, and it is also used as an electoral district for general and district council elections. Actually the cantons form important centres of business. It is at the little town which forms the capital of the canton and from which the canton takes its name, that fairs are held; it is here that the ministerial officials with whom the peasants have most to do, notaries and ushers, hold their sittings; here the several administrative officials with whom they come most into contact will also be found, namely, the Justice of the Peace, the rate collector, the tariff agent, and inspector of roads. The commune which is the capital of the canton often provides funds for a cottage hospital, where patients from the other communes of the canton can be treated for a daily charge; it is at the capital of the canton that the police force is stationed, representing the only public force over the greater part of the country; and here young conscripts must come before the military tribunal for enrolment in the army.

Before the disestablishment of the church the canton was even the centre of religious life; only the catholic priests at the head of the principal parish could assume the title of vicars (*curés*), the Government reserving the right to approve their appointments, while the rest were at the discretion of the bishop.

According to the 1848 Constitution the electors under the system of universal suffrage, had to attend the capital of the canton in person in order to register their vote for the election of deputies, and the decree of January 29th, 1871, which laid down rules for electing the National Assembly, etc., did not alter this.

On the whole, however, it is plain that the canton is essentially a territorial division in which State officials may exercise their authority; it groups the communes

together, forming a not unimportant "country," but it has no life of its own; there are no authorities either elected or appointed with powers to control the general administration of the canton; it has no institutions, no budget, no roads, hospitals or establishments of any kind.

The canton might play a very different part, such as was envisaged in 1795; for there are in France a whole host of communes between which local life is scattered, grows enervated and stagnates. Ten isolated communes have not the means to establish separately efficient institutions for relief, hygiene, etc., but grouped together in cantons they could organise such institutions successfully. That is one of the most interesting problems which confront future reformers.

The Eighteenth Century reformers, especially Le Trosne, in his famous work on the "Administration of France," confined themselves to examining local life at its lowest, scattered and hence debilitated among the innumerable petty parishes. The debates of the Constituent Assembly show that this body was considering the subject from the same viewpoint; yet its wish to create cells capable of a growth in keeping with the fundamentals of local life came into conflict with a combination of memories, tradition and pride which proved irreconcilable. The Assembly confined itself to suppressing the individuality of several thousands of parishes, and for the rest decided that every existing group whether under the name of towns, market towns (*bourgs*), or *communities*, should form a commune under the new organisation.

The Directorate of the year III (1795) attempted to fuse the small communes into municipal cantons; but with the Consulate the spirit of individualism again triumphed; Napoleon doubtless thought to make the arrondissement the most important administrative division of local life; but the intention was never put into execution;

and he finally confined himself to ordering a further suppression of tiny communes. Too many, nevertheless, still remain, more than eighteen thousand numbering less than 500 inhabitants, more than five thousand having less than 200, and 137 less than fifty. A commune of the Seine-et-Oise district is contained in some twenty-two acres, say 320 yards square, about as big as the Place de la Concorde ; whilst the commune of Arles covers some 250,000 acres.

On the whole, except for the reduction to thirty-six thousand units, the division of France into communes in 1918 was very much the same as in the time of Louis XIV.

However, the Revolution and later the Empire endeavoured to abolish the diversity of the old French institutions, in order that out of uniformity unity might be borne. The same legislation applies in principle to little rural communes and to great urban populations such as Lille or Bordeaux.

Every commune has a representative assembly known as the municipal council, comprising from ten to thirty-six members (with the exception of Lyon and Paris, which have fifty-four and eighty respectively), and elected by universal suffrage, theoretically from a single list of all electors of the commune, although in exceptional cases a commune may be divided into sections each electing a certain number of members. The municipal council is elected for four years, at the end of which time it becomes renewable in its entirety. To be eligible one must be able to prove certain ties with the commune either by inscription on the electoral list or on the list of ratepayers, and the number of non-resident ratepayers must not be greater than a quarter. The council holds four ordinary sessions every year of a fortnight each.

Every council elects from its own members a mayor and his deputies (*adjoints*), whose sole duty is to take the place of the mayor if he is unable to be present ; they have no

duties of their own and do not constitute a collective authority. The mayor acts in a double capacity ; primarily, he is the executive organ of the municipal council which has elected him, and the administrator of the commune ; but he is also a State agent, the immediate subordinate of the prefect in the ranks of the general administration, entrusted with seeing that the laws are carried out, and with the maintenance of order, bound to support the law in the apprehension of wrongdoers, and to give assistance in army recruiting. It has already been noted that he directs the drawing up of the electoral lists, and is in charge of the ballot. The mayor is sometimes represented as a paternal, extra-judicial authority, unfettered by party considerations, and thus the rule is justified by which mayors "hold the urns." This is pure fiction : municipal elections are political struggles and the mayor is the head of the winning side ; he is a party man from whom impartiality cannot be expected. Indeed, rivalries become more bitter as one descends the political scale. One has but to examine the proceedings before the State Council, to see by what mean subterfuges citizens would be victimised if left entirely in the hands of these so-called paternal magistrates. It has been argued that if party passion has been introduced into local elections, which ought to have purely an administrative character, the blame must be laid at the door of the legislator who entrusted municipal councils with the designation of senatorial electors ; but this is an *a priori* view. In Belgium, where the municipal councils have no hand in the election of senators, party passions are rife in the communal elections.

All elective local offices, such as that of general councillor of an arrondissement, mayor, or deputy, are legally unsalaried. Actually, under the double influence of the progress of socialist ideas and the increase of the parliamentary salary, many local assemblies endeavour to

allow their members some remuneration of one kind or another.

The local authorities are naturally assisted by staffs, varying in importance with the services which they have to carry out. The administration of rural communes has long been noteworthy for the useful and very important work performed by the national schoolmaster as secretary to the mayor.

Under a system of decentralisation the electors of the above-mentioned bodies are free to choose who shall administer public affairs of local interest, and the administrators thus chosen are empowered to take decisions concerning such affairs. Under a centralised *régime*, on the contrary, public affairs, even those of local interest, are administered by a distant State authority or by agents appointed to the district.

It is a common but a serious error to say that modern France is still under the rule of Napoleonic centralisation; the framework only remains. The *régime* of the year VIII (1799) realised in fact an almost perfect system of centralisation, so far as concerned the appointment of staffs and the power of decision. All local authorities who are to-day elected—mayors and members of general, district and municipal councils—were then directly appointed by the Head of the State or his immediate representatives, the prefects; moreover, these councils arbitrarily appointed by the central power, and therefore bound to submission and obedience, did not possess a shred of authority or power of decision; they were purely deliberative assemblies, giving, when requested, their advice, which was taken or disregarded by the central power as it pleased. The general council was indeed nothing more than a body of local noteworthies called together annually by the prefect for a few days, to discuss with him the needs of the department, after which they were dismissed, and he was

again entirely free to carry on the administration under the sole control of the central power.

Things are greatly changed to-day; there has been decentralisation both as concerns the staff and the power of decision. Since the July monarchy local councils have been elective (Laws of 1831 and 1833); since 1848 they have been elected by general suffrage; in addition since 1883 all mayors without exception have been elected by the municipal council from among its own members.

Decentralisation of the staff, unknown in the year VIII, is now complete in the communes, but not so far advanced in the department, since here there is no one man elected to carry out the deliberations of the general council, *i.e.*, there is no "departmental mayor;" but the executive power places its representative the prefect as the executive authority over the department.

Decentralisation of the power of decision followed that of the staff in 1837-8, when general and municipal councils were granted some slight executive powers which have steadily grown ever since, so that to-day after the great departmental law of August 10th, 1871, and the communal charter of April 5th, 1884, the elected councils may be said to rule the affairs of the department and the commune. This the communal charter actually proclaimed in one of its most important articles: "The municipal council shall settle by its deliberations the affairs of the commune."

It must not be forgotten, however, that departments and communes are but parts of the nation, and their activities must not run counter to the general interest. Accordingly, to ensure that their actions shall conform with the general interest an institution known as administrative supervision (*tutelle administrative*) has been created which acts as a counter-balance to decentralisation; "You shall act on your own initiative;" declares the central power, "but I shall prevent you from acting unwisely."

This administrative supervision is exercised both on persons and on actions. In the first place, local councils can be dissolved, not as a whole, but separately, by special command of the head of the State. Laws have been passed, however, of an ever-increasing liberal tendency to prevent the Government abusing this power; thus the head of the State must immediately inform the Chambers, if they are sitting, of the dissolution of a general council, and the Chambers fix the date of the ensuing election; if they are not sitting, the election takes place on the fourth Sunday following the order of dissolution. Dissolutions of general councils are, however, extremely rare.

A municipal council can be suspended in an urgent case for one month by a prefect, with the approval of the Minister, and can be dissolved by a decree of the head of the State, passed by the Cabinet and containing reasons for such a dissolution; but a new municipal council must be elected within two months. Such dissolutions are more frequent than those of departmental councils, and usually occur when municipal life is in danger of being paralysed owing to a division of the council into two parties of equal strength, neither of which will give way. Again it sometimes happens that members of municipal councils are found guilty of electioneering frauds, which for some reason or other have not entailed the annulment of the election by the proper judicial authority. In this case the assembly is very properly dissolved. Between the time of dissolution and the new election current affairs are carried on by a special committee or delegation, appointed by the President of the Republic. In the case of a general council, if the Chambers are not sitting, a new council is very quickly elected; if the chambers are sitting, they fix the date of the new election and may decide that in the meantime the departmental commission shall continue to function.

It has been remarked that the mayor acts in a dual capacity, as a State agent and as the representative of the commune. The mayor is elected by the commune, but may be dismissed by the head of the State; he can be suspended by the prefect for one month and by the Home Minister for three months. The mayor thus dismissed keeps his title of municipal councillor but cannot be re-elected as mayor until a year is passed. Until recently, the power of dismissing mayors and their deputies, to whom the same rules applied, was arbitrary and arbitrarily exercised; for instance, a mayor was dismissed for having taken part in the procession of the *Fête Dieu*, but an important law of July 8th, 1908, has endeavoured to stop or at any rate to check these abuses: henceforth the mayor can only be suspended or dismissed after having been required to present explanations in writing; moreover, all such extreme measures against municipal officials must state clearly the reasons for their being taken, and the State Council has given signs of wishing to act as judge of the validity of these reasons.

Local councils are not Parliaments, and have not the power to take or execute sovereign decisions. France cannot be abandoned to the whims of eighty-seven general councils and 36,000 municipalities. A balance must be struck between the necessary degree of local liberty, and the equally necessary safeguarding of the general interest; and such a balance demands very delicate and often very complicated arrangements.

One cannot but be surprised at the extreme complexity of French legislation with regard to the executory force allowed to the deliberations of local bodies. According to the importance of the matters concerned, decisions are sovereign, definitive, liable to be annulled either for illegality alone or for unsuitability, subject to suspension, executory on condition of the approval of the central

power, or completely deprived of executory force. The deliberations of local bodies being thus arranged in various categories, it is difficult for the layman to get any complete idea of local liberty, especially since it often happens that the exception is observed rather than the rule.

The *ordinary* resolutions of the general council can be suspended by a simple decree merely on the score of unsuitability; on the other hand, resolutions concerning statutes or bye-laws (*réglementaires*), which form as it were the common law of the municipal council's resolutions, become law one month after being deposed at the prefecture, and can only be annulled for illegality. At first sight it would seem that the power of taking resolutions is more decentralised in the commune than in the department; but it is doubtful whether such is really the case. Actually, all resolutions of any importance, all those which affect the life of the commune, can only be carried out with the approval of the prefect; without such approval the municipal council could not even change the name of a street. Liberty to decide on questions of statute is illusory, since statutes usually only concern general principles. Suppose, for instance, that all conditions have been fulfilled, so that the municipal council can decide by itself upon the construction of a public laundry; an expropriation order will perhaps be necessary, which the municipal council will not have authority to grant: it will certainly mean a credit item in the budget, and this must be passed by the central power; doubtless also a contract, which again must be approved by the prefect.

Another ransom which local authorities have paid for the direct power of decision is the institution of compulsory expenses. The administration laws contain a whole list of expenses (still further lengthened during the last twenty-five years, by so called *dépenses de solidarité*, or joint liability expenses) which the local council is

forced to pay, and which must be met by the creation of new revenue. If the council neglects this double duty, the central power, represented by the President of the Republic in the case of the department and by the prefect in that of the commune, supplies the money by an official expenditure note (*inscription d'office*), and imposes an official rate (*imposition d'office*) on the citizens to balance the expense. For several years the Paris municipal council refused to vote the police budget, with the result that the matter remained in the hands of the central power.

The complexity of this legislation cannot be understood if the historical viewpoint is disregarded; it must be insisted upon that Napoleonic centralisation was the starting point, and that the central power has but very gradually and unwillingly relinquished its hold, always endeavouring to retain its grasp at any rate in part by means of supervision over the direct power of decision which it was abandoning.

A greater amount of centralisation in certain urban populations of unusual importance has thus been conserved; in spite of the desire for uniformity which has so dominated French administrative legislation, it has been found impossible to regulate Paris in the same way as any other French communes; first, on account of its importance; some European States, Switzerland, for instance, have a population less than that of Paris, their budgets deal with no larger sums, and their public debt is not so heavy; secondly, from its being the capital and the seat of public authority: Paris belongs to France, and the nation's representatives must therefore have a special right of control over its administration: finally, it is a fact confirmed by the stirring history of France, that "who holds Paris holds France;" revolutions are made by the people of Paris. It follows that all Governments feel a very intimate

anxiety for the maintenance of order in the capital, and it is for these reasons that the city of Paris is less decentralised than other communes. In addition Paris has absorbed practically the whole department of the Seine with the result that communal and departmental administrations are superimposed and hence the departmental administration is also less decentralised than in other departments.

This may be seen in various ways. First of all, there are special rules with regard to staffs. Paris is divided into twenty arrondissements distinguished by numbers, each arrondissement being divided into four quarters called by proper names; each quarter elects separately by the single voting system one municipal councillor. This rule ensures, at least in experience, a representation of minorities in the city council, and thus prevents it ever getting into the hands of one violent party which could at a given moment obtain a majority in the capital as a whole. These city councillors are at the same time general councillors of the department of the Seine, which title gives them the legal right of electing senators; to make up the numbers of the general council a few additional men are elected from the surrounding district who are general councillors alone. These two bodies, the municipal and general councils, offer a considerable remuneration to their members, 9,000 francs per annum to municipal councillors and 4,500 francs to those who are only general councillors. Such remuneration is probably justified by the onerous nature of their duties; the Paris municipal council, for instance, sits practically the whole year round; incidentally this is a very obvious and flagrant violation of the law, but the Government forbears to suppress the illegality from motives of political convenience.

The city of Paris is less decentralised than other communes with regard to its staff: *it has no mayor*. His municipal duties are carried out by the departmental

authorities—the prefect of the Seine and the prefect of police, this department being the only one to have two prefects. There are, it must be admitted, at the head of each arrondissement persons with the name of mayors; but being appointed by the head of the state upon the Home Minister's recommendation, they have no communal duties, but simply carry out State duties, such as the keeping of the civil registers, of births, marriages, deaths, etc.

The city of Paris is also less decentralised than other communes with regard to its executory power. The charter of April 4th, 1884, does not apply to it, and so it still remains under the law of July 24th, 1867; hence in theory no resolutions of the Paris municipal council can be put into action without the express approval of the prefect. The prefect of the Seine and the municipal council are thus two equal authorities who collaborate with equal powers in the administration of the capital. As might be expected there is on foot a movement to obtain for the city of Paris complete communal liberties such as are observed in all other communes: "Let Paris be as free as Carpentras!" is their cry; They protest against the *Ville-Lumiere* being kept in bondage when Carpentras is free! But so far the movement is confined to a small group of politicians.

On account of its importance and also for political reasons the city of Lyons affords several peculiar features of municipal organisation. There are six arrondissements, each administrated by two auxiliary and elected magistrates, but most important, the police are under the authority not of the mayor but of the prefect. This last provision was extended to Marseilles by the law of March 8th, 1908, and resulted in an immediate increase of security in the great Mediterranean port.

It will be worth while to consider briefly the future of decentralisation. Its undeniable advantages are almost

too obvious to be dwelt on here; it brings the administration to every man's door; it allows those men to decide upon particular matters who have the greatest practical knowledge of those matters; theoretically it ensures a proper feeling of responsibility, since the men charged with such particular affairs are acting directly under the eyes of the persons interested.

The greatest advantage of decentralisation consists in the fact that it is a school of public life; citizens feel that they are taking an immediate part in the conduct of the affairs of the commune; they feel that it is they who decide upon the building of a market hall or square. Decentralisation also tends to foster that public spirit which is necessary for the protection and the existence of the nation. It is this public spirit which upholds the organs of the constitution, and when they disappear in the whirlwinds of revolution, takes their place and still preserves the unity of the State.

But this principle excellent in itself, would become dangerous by excess; it would degenerate into anarchy and disorder, and would waste the resources of the country. Are we, on the pretext of liberty to allow one city to become a festering spot, capable of poisoning the whole of France? Shall councillors elected for the moment by a fickle majority be permitted to destroy cathedrals which shock their æsthetic sensibilities, or from practical considerations do away with remnants of the past which form a part of the nation's heritage? Shall hooligans remain masters of the streets of Marseilles, while the police force disorganised by the weakness of the municipality looks on helpless? Such examples might be indefinitely continued.

It is evident that decentralisation can only be a tendency, not an absolute rule. A balance must be struck. It is no good proceeding to extremes. When France had recovered from her wounds it was good to remove the

heavy splints in which Napoleon had imprisoned her limbs. It was necessary to decentralise. But that disparaging criticism of the centralised *régime* of a century ago is plainly false when applied to the government of to-day. There are roads where it is necessary to mark stopping points; there are even some points where the courageous path is to retrace one's steps: to confide the maintenance of order and public safety to mayors, keepers and policemen chosen under the influence of petty local partisanship is the greatest of errors. The police must be State police or nothing. A glance at the important document published annually by the Home Minister under the title of "The Financial Situation of the Communes," will explain the motives of those who demand "financial liberty" for municipalities. In many places the ratepayer pays as much and more to the department and the commune as he does to the State; one can but imagine what it would be like if "financial liberty" existed. The commune would exhaust the ratepaying capacity of citizens and the State would find itself confronted with shorn sheep; then it would be seen that to give liberty to local administrations would be to deny liberty to all administration whatever.

It is useless to proceed to extremes, and in hatred of Napoleonic tyranny rush into the confused anarchy of the Constituent Assembly.

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Chapter X

JUSTICE

If the theorists had to construct an entirely new Constitution in accordance with their abstract principles, they would entrust the business of judging, *i.e.*, of settling the differences inseparable from the life of society and pronouncing penalties against wrongdoers, to a single heirarchy, whose sole work this should be. This body would be placed under some central authority, such as a High Court or Lord Chief Justice; it would be entirely independent of other authorities performing other state duties; in a word, it would form a "power" such as Montesquieu described in his doctrine of the "separation of powers." This ideal, if it is one, has not been entirely realised in French institutions. The office of judging is entrusted to authorities of very varied origin and character; no judges are wholly independent; and some are no more independent than ordinary officials; there is no single judicial hierarchy; there is even at times a total confusion of powers, as when certain authorities leave their ordinary path to perform an essentially judicial work—when the Senate, for instance, forms itself into a high court of justice.

On the whole the most striking feature of the administration of justice in ordinary life is the existence of two parallel and often rival bodies; on the one hand there is the judicial order having at its head the Court of Cassation, and normally concerned with the work of judging; on the other, there is the administrative jurisdiction concerned

with cases in which public authority or the public services are an interested party; while between these two and to settle their rivalries there is another body of judges known as the Court of Conflicts.

The office of judging is confined to officials commonly called judges, who form as a body the "magistracy." They comprise the members of the courts of primary jurisdiction or of "first instance," the Courts of Appeal, and the Court of Cassation. It is to them that one refers when speaking of the reform of the magistracy, the irremovability of judges, etc. Beneath this order yet attached to it by the fact that their decisions can be appealed against and quashed by the higher court, are the *juges de paix*, or Justices of the Peace, who form what is sometimes called the "cantonal magistracy." All contentions between citizens unless expressly allotted by law to other judges must be brought before them, hence their name of "civil judges"; but it must be noted that they can also pass sentences as criminal judges.

Civil Justice

A Justice of the Peace sits at the capital of each of the 2,863 cantons. This office originated at the Revolution, being borrowed from England and Holland. It agrees in principle with the doctrine of Thouret expressed in 1750 that "the justice of the courts is only provided for those who have not the sense to avoid it," since actually the first duty of a Justice of the Peace is to prevent law suits; the rule is that all proceedings before arriving at the proper courts must undergo an attempt at conciliation; the Justice of the Peace has to attempt to reconcile parties in order to dispense with the costs of litigation, and to prevent further embitterment of quarrels contrary to the well-being of society. Every year 700,000 attempts at conciliation are made in this way. It is a very important work, and when

dealing with the enrolment of Justices of the Peace we shall see whether they are called upon to give such guarantees of knowledge and moral authority as are necessary for its proper execution. Actually this attempt at conciliation tends to become in the towns a mere formality; in the country it is more real, and statistics show that it stops forty per cent. of potential law suits.

In the second place, Justices of the Peace are entrusted with the task of defending the interests of widows and minors, and for this purpose they preside annually over some 70,000 family councils (*conseils de famille*).

Finally they perform an important work in the preservation of social harmony; they judge the little law suits which sometimes in outlying places give rise to such mortal enmities between neighbours. They settle definitely and without appeal (save for the very limited control of the Court of Cassation in cases where they exceed their powers) a very large number of actions where the sum involved does not exceed 300 francs—actions, for instance, concerning personal property, disputes between travellers and hotel keepers or carriers, between landlords and tenants or farmers, between masters and servants, or employers and their workmen, or even quarrels arising from the sale of domestic animals, etc. They deal with such matters when they involve more than 300 francs, but appeal is then allowed to the district court (*tribunal d'arrondissement*) and also with a whole series of affairs laid down by law, and including damage to fields, disputed boundaries, small board and lodging houses (where not more than 600 francs is concerned), waterways, attachments on small salaries, workmen's accidents, etc.

It must be added to complete the description, that the Justice of the Peace aids the public authority to discover and punish infringements of the law, and is himself a judge of petty crimes.

The jurisdiction of the Justice of the Peace is limited in that he can only deal with those cases specially allotted to him by law; but the laws—the last one was that of July 12th, 1905—show a growing tendency to extend his jurisdiction. This is due to the rapidity and simplicity of the procedure, which is four times cheaper than that of the other courts.

The social work of the Justice of the Peace is therefore of the first importance, since it is upon him that the maintenance of peace and order in the canton primarily depends; but the question arises, is the practical organisation of the office in keeping with this ideal conception of the " Solomon of the canton ? "

The law of July 12th, 1905, endeavoured to improve the conditions for appointing Justices of the Peace. They are nominated by the President of the Republic, on the advice of the Minister of Justice, and grouped in some twenty classes. The candidate must provide himself with a diploma, which is easy enough to obtain—the first law certificate will do—and must have passed a certain time in the ministerial departments or public offices, longer or shorter according to the value of the diploma. Failing any diploma ten years in public or even certain elective offices (such as those of mayor, deputy mayor, or general councillor) are required.

Justices of the Peace receive a salary varying from 2,500 to 5,000 francs per annum, rising to 8,000 francs at Paris. They are not irremovable but are safeguarded by certain guarantees; they cannot be dismissed or reduced in rank without the sanction of a commission appointed by the Minister of Justice, consisting of the procurator general and three councillors of the Court of Cassation, and directors of the Ministry of Justice.

The organisation is good in itself but spoilt by political institutions. For instance, there have been instances of a

candidate such as has been described above bartering his ten year mandate in exchange for the office of Justice in a canton; but the fundamental evil in the appointment of Justices is intervention on the part of Members of Parliament. Justices of the Peace hold too important an office (in that it keeps them continually in touch with electors) for the district deputies to refrain from trying to get them under their thumb. Consequently all reforms must ultimately depend upon the fundamental reform of political institutions and customs.

We have next to examine three courts or tribunals composed of non-professional judges. With the approval of the State Council the President of the Republic may create special commercial tribunals to judge disputes arising out of commercial transactions. In 1919, the number of such tribunals was about 200. It is to be noted that in districts where there is no such special court the civil court judges commercial matters. These "consular judges" are elected by their peers for two years, when they become re-eligible for one further period, and they appoint their president themselves; the electorate comprises all merchants registered for five years, and candidates must be above the age of thirty. The remarkable thing about these elections is the number of non-voters; in 1907, at Paris, there were 45,000 non-voters out of 47,000 registered.

The institution of commercial tribunals may be criticised on principle. Commercial law is not a mystery into which none but the buyer and seller is initiated, but a written code which can be interpreted by professional lawyers; nor let it be thought that commercial procedure is simpler and therefore cheaper, for the civil tribunals use the commercial procedure when dealing with commercial affairs. Still less is it an informal jurisdiction where parties conduct their own defence without having recourse to paid agents, for in point of fact officious intermediaries

abound, solicitors, trustees, liquidators, who are just as expensive and less to be trusted than official ones. If the tribunal is puzzled by some complicated problem it appoints an arbiter or referee to decide the case, whose fee is paid by the losing party. These tribunals settle some 200,000 cases annually; appeal can be made from them to the court of appeal.

Councils of "prud'hommes," or arbitration councils, are elective judicial bodies composed of an equal number of masters and men, their task being to settle differences arising out of the contract of labour. It was foreseen that the "prud'hommes" who were employers might all decide for the masters and those who were employees for the men; and in such a case the affair is re-tried with the addition of a Justice of the Peace. The decisions of these councils are final where a maximum of five hundred francs is involved; above this figure appeal is possible before the civil tribunal. Accordingly at every demand of the workmen the employers cross petition for compensation exceeding this amount so as to avoid the risk of being judged by employees plus a Justice of the Peace. The law of 1907 was necessary to probihit candidates for these councils from making election promises, since certain labour judges were actually binding themselves to decide invariably against the masters. The majority of matters brought before this court concerns wages and compensation for wrongful dismissal.

It is a principle of French common law that no citizen can be dispossessed of property without first receiving due compensation; and to decide this is the business of the valuation jury. Sentence of expropriation is pronounced by the civil tribunal but the compensation is fixed by a jury of twelve citizens appointed by the general council and the court of appeal, or chief tribunal of the district, which may be challenged by the parties concerned.

We now come to the permanent magistracy which is composed of the judges of the tribunals "of first instance," and the councillors of the courts of appeal and the Court of Cassation.

Certain general rules or principles are common to the various degrees of jurisdiction. The first of these may be known as the collegiate principle. The Justice of the Peace is the only judge who acts by himself; all other judges are formed into colleges for the purpose of delivering judgment; the result is that magistrates are very numerous and consequently poorly paid.

In the second place judges are permanent; they cannot be removed against their will, and disciplinary measures can only be taken against them by the Court of Cassation acting as a supreme council of the magistracy. The magistrate is therefore independent of the Government so far as keeping his seat on the bench is concerned, but it is another matter if he is eager for promotion. All statesmen have given serious attention to the suppression of favouritism in the appointment of magistrates, and the list of their projected reforms is a long and interesting one. The sole result of their efforts up to the present time has been the decree of August 31st, 1906, passed as a consequence of the finance law of the same year, which forms the provisional guide of the magistracy, and lays down rules upon entry and advancement in this career. The Minister can choose one quarter of the magistrates in certain definite classes laid down by the decree; for the other three quarters a competitive examination is necessary for entrance. As for advancement, it can only be obtained by magistrates who have been placed on the promotion list by a selection committee composed of the first president and procurator general and four councillors legally appointed from the Court of Cassation, together with directors from the Ministry of Justice; promotion is impossible to those not

on this list, and in any case one advances in accordance with the will of the Government.

Permanence of office is thus but a negative independence. Such as it is, however, it remains a precious possession, and the prestige of French justice has been sadly lowered by any attempts to retract it on the part of new governments in the aftermath of revolutions.

Small salaries are general. Although judges must be qualified lawyers and have passed an apprenticeship at the bar they are very moderately remunerated. There are over two thousand judges in France whose salaries average 3,000 francs per annum, out of whom a few reach 6,000 francs. Fuller details will be given when we describe each class of magistrate.

Officials of the "public ministry," on the contrary, are not irremovable. Joined to each of these judicial bodies and side by side with the permanent magistrates who form the "seated magistracy,"[1] there is the public ministry forming the "standing magistracy,"[1] which has to superintend the application of the law and even to an extent which it is difficult to define represent the claims of the Government before the tribunals. Members of this public ministry have no guarantee against dismissal other than that provided by the finance bill of 1905, *i.e.*, they must be informed of the reasons in writing, and they can therefore be dismissed at will. The public ministry is graded; for each court of appeal there is a procurator general (assisted by counsel known as advocates general and juniors), who exercises his authority upon the *Procureurs de la République,* or public prosecutors, and their assistants who sit in every district court. No judicial body can function without the presence of a member of

[1] These names are due to the fact that ordinary judges give judgment and pass sentence while "seated," whereas magistrates of the public ministry must "stand" when they address the court.

the public ministry. Such members are obliged by the rules of their order to carry out proceedings when so ordered by their superiors, but they are not forced to speak against the dictates of their own conscience :—" the written word is bound ; speech is free."

Procedure before the civil tribunals is complicated, slow, expensive, and archaic. Democracy has preserved in essence the Napoleonic Code of 1806, which in its turn had but refashioned the measures of those ordinances which Colbert, Pussort and Lamoignon had passed in an attempt to unify the procedures of the various "*parlements*" or courts, so that the following passage from the famous writer Montesquieu still has a bearing upon French procedure : " As to my position of president, I have no qualms ; I understand the questions themselves well enough ; but as to the procedure, I could make nothing of it. However, I have applied myself to it."

This procedure is chiefly remarkable for its accusatory character ; it proceeds without the co-operation of the judge. The case is prepared by members of the legal profession by whom the parties must be represented ; the *avoués*, corresponding to English solicitors, exchange expensive documents by the means of *huissiers* or ushers, also expensive, and several of the documents will have to be registered which means still more profit for the State coffers. Calmly seated on the bench the judge waits until the truth shall emerge from this constant circulation of papers over which he has no control, and especially until *avocats* or barristers, who alone have the privilege of addressing him, shall rise to set forth in speech the rival claims of the two parties.

The judge has no power of initiative ; he reads the documents of the avoués and listens to the explanations of the avocats, but does not see the actual parties. He may decide a whole series of lawsuits covering several

years in which purely imaginary persons figure, the creations of some clever swindlers. Although everybody is concerned in the reform of such matters, yet the stumbling block remains that it can only be accomplished by the co-operation of the technical experts, and these gentlemen either from custom or a selfish regard for their own professional interests seem to think that most of the existing rules of procedure are unalterable.

We have now to consider the various grades of jurisdiction and their respective courts. In default of any special decree committing cases to a certain special jurisdiction they come before the tribunal sitting at the capital of each arrondissement, *i.e.*, to the chief district tribunal.

This tribunal decides personal actions up to 1,500 francs "in last resort," that is to say, without right of appeal, as also actions concerning property where the income derived does not exceed 60 francs per annum. Appeal is allowed in cases outside these limits to the Court of Cassation. It is itself a court of appeal from the decisions of Justices of the Peace and councils of prud 'hommes.

The tribunal cannot function without the presence of three judges on the bench, a president and two assessors or assistants, and in important arrondissements several chambers are created. The president has extremely important powers; he is a petitionary judge, *i.e.*, in urgent cases he can himself carry through the necessary measures by an ordinance; he can order the imprisonment of children on the demand of their parents; he has to attempt to reconcile husbands and wives, who must appear in person before him before starting separation or divorce proceedings.

The tribunal of the Seine is in a class apart; its president draws a salary of 20,000 a year and the other judges 8,000. Provincial tribunals are divided into three classes: presidents and procurators receive from five to ten thousand

francs per annum, and the other judges from 3,000 to 6,000; deputy judges from 2,800 to 5,000.

There are 359 district tribunals. They were perhaps necessary originally when justice had to be brought near to those who needed it, but now that railways have shortened distances, there are many courts whose poorly paid magistrates are yet overpaid in consideration of the amount of work they have to do; and while everybody is agreed upon the necessity for abolishing some of these, yet every district deputy indignantly opposes the proposal to deprive his constituency of its tribunal, and the other deputies not threatened with the same sacrifice support him from a feeling of *esprit de corps*. The Chamber passed the proposal for the reduction of the number of tribunals in the budget act of 1890; but twice, in 1880 and in 1894 it opposed endeavours to realise such a proposal. The necessary reform of the magistracy seems bound up, however with the abolition of some of the 2,300 judicial benches.

The court of appeal owes its origin to the principle of having two grades of jurisdiction, by which all suits can be submitted to two jurisdictions if the parties so desire it. This principle of two grades was laid down at the Revolution, in order to ensure a satisfactory examination of the case, and no more than two in order to avoid complications and excessive costs. Detesting a judicial hierarchy, and to prevent the resurrection of the old courts or "parlements," the revolutionaries determined that all tribunals should be equal, that there should be no special appeal jurisdiction, and that appeal should be made from one tribunal to another of the same order. The Consulate created special tribunals of appeal, which came to be known as "courts" under the Empire, composed of magistrates of higher rank than those of the tribunals of first instance.

There are twenty-seven courts of appeal, comprising one for Corsica, one for Algeria, and twenty-five for the home country. Every court, therefore, that of Bastia excepted, includes a varying number of departments under its jurisdiction; the Paris court of appeal, for instance, has seven. Every court comprises a first president, presidents of Chambers, and councillors; in addition there is a public ministry composed of the procurator general, assisted by advocates general and their deputies. Courts of appeal are of two kinds only, that of Paris, and those of the provinces. At Paris the salary of first presidents and procurator generals is 25,000 francs per annum; that of councillors 11,000. In the provinces first presidents and procurator generals receive 10,000 francs, advocates general 8,000, councillors 7,000; and the procurator general's deputies 6,000. The great ambition of judges of primary jurisdiction is to obtain the red robe with the accompanying salary of 7,000 francs per annum. Of the many who obtain nomination a third only are elected.

Procedure in the court of appeal is similar to that in first instance. The judge waits until the case has been gone through by the avoués (only different from the others in that they appear only before the court of appeal), among whom numerous documents pass at great expense; the court is then enlightened by the pleading of the avocats, who of course must also receive honorariums. The court of appeal cannot sit unless five councillors are present; this is a great number, too many in fact, for when a bench is so numerous the presence merely of a certain number of magistrates becomes all that is necessary.

At the head of the judicial hierarchy is the Court of Cassation which has the duty of seeing that justice is administered over all France, and that the law is uniformly interpreted over the whole territory; originally therefore it was an instrument of unification. It has not to examine

questions of fact, but must accept absolutely the evidence recorded in subordinate courts ; it confines itself to examining whether the decision appealed against conforms with the law or not ; it judges solely in law. Moreover the Court of Cassation never substitutes its decision for that of the subordinate jurisdiction ; it quashes a decision and the decision is then annulled, but the case is sent back to be re-tried before a jurisdiction of the same class as that from which appeal was made.

There is but one Court of Cassation for the whole of France ; this unity is necessary since the object of this jurisdiction is precisely that of ensuring unity in the administration of the law.

It comprises a first president, three presidents of Chambers, forty-five councillors, a procurator general, and six advocates general. The first president and the procurator general receive a salary of 30,000 francs per annum ; councillors and advocates general, 10,000 francs. A seat in the Court of Cassation is the lofty ambition of all magistrates, and it is generally the first presidents and procurator generals of the provinces who obtain this honour. It will be noted however, that they come to Paris where living is very much dearer with the same salary as they had in the provinces, but they are compensated by the fact that the age limit for the Court of Cassation has been extended from seventy to seventy-five ; so that if, as the last governmental project for magisterial reform seemed to indicate, the age limit were lowered to seventy, the recruitment of the supreme court might become a matter of difficulty. 18,000 francs, the income of a *bâtonnier* or chief barrister practising in a little provincial court, that is what democracy offers as its highest pecuniary reward, which only a chosen few of the magistracy can ever hope to obtain ! In England the Attorney General receives about £16,000 per annum ; in the United States the members of

the Supreme Court receive a salary of about £2,800, and at the age of seventy or after ten years of office they have the right (which they do not use) of retiring on full pay.

The procedure before the Court of Cassation is a symbol of the fact that political revolutions have not broken the continuity of French social institutions. It has been mentioned that the procedure before the tribunals and courts of appeal is still governed by the rules of Colbert, Pussort and Lamoignon, but these rules were at any rate formulated anew in the Napoleonic Code; whereas the procedure in the Court of Cassation from preliminaries to actual annulment goes back directly to the ordinances of Louis XV, regulating the procedure before the *Council of Parties*. There are three important points:

1. The procedure is essentially a written one. The parties submit very detailed memorandums to the court, setting forth all the reasons for the admission or rejection of the appeal; the actual pleading is only a brief commentary on the principal points already set out. The case is gone into by a councillor acting as a recording magistrate, who has to make a written report which he reads aloud and then puts forward a proposed decision.

2. The whole procedure is conducted by one of the sixty avocats of the State Council and Court of Cassation, men who combine the double office of avocat and avoué. They are state officials, and sell their services, but are not subject to any tax on the remuneration which they receive from clients according to mutual agreement.

3. The procedure is noteworthy for the double examination, first by the Chamber of Requests, and then by the Civil Chamber. A person who appeals to the Court of Cassation does not immediately bring his adversary before the supreme jurisdiction. His demand that the decision unfavourable to him should be annulled is first of all

examined by the Chamber of Requests without his adversary being able to reply. This Chamber does not profoundly study the grounds of appeal, but simply examines whether it is *bona fide* and likely to succeed, and even if the appeal comply with this, it may yet fail before the Civil Chamber. According to the spirit of the institution the Chamber of Requests should confine itself to a superficial examination, only stopping appeals which are evidently totally unfounded, but in point of fact this Chamber conducts a very minute examination, and admits only those appeals which it thinks very well founded; with the consequence that the Civil Chamber rejects but one appeal in three which have passed through this sieve.

The Court of Cassation is not only the supreme jurisdiction, which sees that the law is observed by all other jurisdictions of the legal hierarchy, but also the supreme council of the magistracy; it has in its power to pronounce penalties against the permanent magistrates, even going as far as dismissal.

The laws passed at the Revolution and still in force on this point have conferred upon it another right of the first importance; with the object of letting the legislator profit from its own experience, it is empowered to present an annual report of all defects in the laws which practice has brought to light; but unfortunately this excellent measure remains but a dead letter.

Criminal Justice.

Two classes of judges were established at the Revolution, those with the exclusive task of settling differences between citizens, and those with the duty of passing sentence on wrongdoers. To-day, except that a jury is added for criminal cases, the same judges administer both civil and criminal or repressive justice.

The penal code grades infringements of the law into three classes according to the nature and severity of the punishment meted out to them; they comprise contraventions, punished in accordance with the ordinary police regulations; delicts, punished by correctional penalties; and crimes, punished by criminal penalties. Each class of infringements has its own special jurisdiction. Contraventions are punished by not more than five days' imprisonment and a maximum fine of fifteen francs; if these figures are exceeded infringements of the law come under the title of delicts.

The great mass of contraventions, consisting principally of violations of police, prefectorial or mayoral regulations, are dealt with before the ordinary police tribunal. The Justice of the Peace takes this title when sitting as a criminal judge. This new duty emphasises again the importance of the cantonal judge as a factor in maintaining public order in his district. His decision can be appealed against in cases of imprisonment, or where the fines, compensation, or damages (costs not included) exceed five francs. For no very definite reason offences on the highways are tried before the prefect's council.

Delicts are tried before the reformatory or correctional tribunal, *i.e.*, the civil tribunal of the arrondissement, which takes this name when administering criminal justice. Its decisions can be appealed against before the Chamber of correctional appeals in the Court of Appeal.

Finally, the gravest infringements of the law or crimes, are tried before the Assize Court. This is a special jurisdiction which sits at the capital of each department, and has not a permanent composition, its members being appointed for each session. It comprises three professional judges who form the bench and twelve citizens forming the jury. The president of the Assize Court is a councillor of the court of appeal, appointed by the Minister on the

recommendation of the Procurator General; the two other magistrates or assessors are either councillors of the court of appeal (which often happens when the assizes are held at a court of appeal), or two members of the chief district tribunal. The jury is supposed to confine itself to deciding upon facts, without considering the judicial consequences of its decision, which are left to be drawn by the bench.

The principle of judging crimes by a jury appears to be an unalterable dogma, or one might also say an unalterable superstition; actually this institution sometimes brings about the most bewildering results. Composed almost entirely of petty shopkeepers, the jury often shows extreme severity towards attacks upon property and a surprising indulgence to personal assaults. Needless to say, it does consider, and that very often, the judicial consequences of its decision, the result being acquittal for crimes whose punishment seems excessive, for so-called *crimes passionnels*, such as child murder and arson. Accordingly, to avoid such a travesty of justice, counsels transform as many "crimes" as they can into "delicts," and so bring them before the correctional court, when the Assize Court is really the competent authority. In so-called political and especially in libel cases, one might often as well allow justice to depend upon a throw of the dice as upon the decision of the jury. Nevertheless, the decisions of the Assize Court are final, and no appeal is possible.

The treatment of the military must also be noted. In England, a soldier remains a citizen subject to the same laws and tried in the same courts. In France a different principle has come into force; the soldier is kept apart from civil life like the mediæval clerks and all infringements of the law which he may commit while in the service are tried in military courts or courts martial. Now that the war is over it must be questioned whether it is necessary for discipline that all infringements committed by soldiers, even when off

duty, should be tried in professional courts, and whether the jurisdiction of these should not be limited to breaches of discipline alone.

All sentences passed by these courts "in last resort" (final as concerns definite statements of fact) can be appealed against (as concerns the interpretation of the law) to the criminal Chamber of the Court of Cassation, which thus plainly controls the whole judicial order.

The question of legal reform is always on the order of the day before the Chambers, and always in the public eye. We may briefly indicate here the general lines on which it will have to work.

It must ensure the magistrates a salary conforming to the dignity and needs of their position. Napoleon merely granted them a slight remuneration, in the hope that whole families of lawyers would grow up among the well-to-do *bourgeoisie* from which magistrates might be recruited. Such an idea though not without value in the past is useless for a modern democracy. Reform is bound up with the abolition of some of the institutions (such as primary tribunals), or posts (such as those of councillors in courts of appeal, deputy magistrates in primary courts), which do not give adequate salaries.

It must gradually free justice from its subordination to governmental authority. Members of the legal profession should be safeguarded by better rules of appointment and promotion. The regulations dealing with public prosecutions and the whole organisation of the public ministry should be revised. At present this public ministry, which has the right of starting proceedings (legally in the Assize Court, but in practice in the correctional court) can be dismissed at the will of the Government, from whom it receives instructions. The examining judge (*juge d'instruction*), whose duty it is to collect evidence, receives "instructions" from the Government, and is

therefore in this sense not a permanent official; for he may find instructions no longer coming to him, and thus be reduced to an ordinary magistrate again.

Finally, public opinion demands both guarantees for the public ministry and the examining judge against the Government, and guarantees for accused persons against the public ministry and the examining judge.

On the whole it must be said that in the ordinary course of things when political interests are not at stake, French judicial administration works very satisfactorily; the magistrates are able and industrious, and in no country are they more honourable.

Administrative Jurisdiction.

Although unjustifiable in principle[1], in practice the administrative jurisdiction has been a valuable instrument of legal progress. It will be useful to examine the general principles upon which it rests.

English law prides itself upon its respect for principles, and on its straightforwardness, on having, for instance, the same judges to settle differences between individuals, as well as lawsuits in which both individuals and the administration are engaged. The only reason, it is alleged, for the administration wishing to have judges of her own is that she has no liking for plain, unvarnished justice, and refuses to submit entirely to the law.

In France, however, the evolution of law has brought this very thing about, namely the institution of judges with special authority to deal with lawsuits in which the administration is concerned. This institution was not born of abstract theories, but was the spontaneous result of a

[1] The whole question of the legality of a special administrative jurisdiction is discussed in Dicey's *Introduction to a Study of the Law of the Constitution*, ch. XII., entitled "Droit Administratif," and in two appendices to the same volume.

pressing need. To accomplish its great work the Revolution had again and again to make attacks upon property and persons ; the activity of its agents was not to be checked by the untimely control of judges, and consequently it thundered its famous prohibitions against them. They were forbidden under pain of losing their office to concern themselves with the acts of the administration. Over and over again they were forbidden to summon administrators before them on charges connected with their office. Thus originated the unfortunate principle of the *separation of authorities*, administrative from judicial, which is too often represented in treatises of administrative law, as a thing settled from time immemorial. Under revolutionary law it was the administration itself, district or departmental, with the king as head of the general administration, which received complaints against the exercise of authority and the working of the public services.

We come now to the second principle which established itself, that of separating the so-called administrative jurisdiction from the deliberative and active administration ; in other words, separating that part of the administration which was concerned in judging from those parts of the administration which were concerned in deciding and acting.

This principle formed too efficient an instrument of government for Napoleon to renounce it. It was necessary that the one master mind should make itself felt ever the whole centralised territory of France, instantaneously and without hindrance ; and to this end no fear of legal proceedings was to paralyse the obedience of his agents ; but while preserving this principle Napoleon used it as he used all the other principles which the Revolution bequeathed to him ; he organised it and perfected it. It was scandalous for the very administrators who had performed the act to be called upon to judge complaints raised against it.

Napoleon righted this by creating a new separation of powers. This new system complete and perfected by a long series of measures throughout the whole of the nineteenth century, succeeded in distinguishing three kinds of administration; (1) the active administration which sees to the daily functioning of public services, and which is generally in the hands of individual authorities such as the head of the State, the prefect, or the mayor; such administration must be the work of a single man; (2) the deliberative administration, which takes decisions but does not itself carry them into action, that being the part of active administration; deliberative administration is carried on by assemblies such as the general or municipal council; such deliberation is the work of many; (3) consultative administration which confines itself to giving advice, and is represented by such bodies as the State Council and the prefect's council.

The progress made during 1799 amounted to this, that the function of judging was taken from the province of active and deliberative administration, and confided exclusively to that of the consultative administration.

The State Council of 1799 was dependent upon Napoleon, but took decisions for itself; it was a constitutional authority. With the Restoration it lost this character, and remained merely a consultative body. Actions in which the administration was a party were settled by acts of the head of the State in Council, known as ordinances under the monarchy, and as decrees under other *régimes*. Doubtless, where opinion on certain disputes was practically unanimous, the head of the State confined himself to giving executive force to the recommendations of his council, though there were certainly two cases in which he took his own decision contrary to the conclusions which had been arrived at after an impartial examination of the affair. This possibility, legitimate according to the principle that

administrative justice was still a limited one, left behind it a grave doubt as to whether there were any strictly legal relations between individuals and the administration. Accordingly by the law of August 11th, 1872, the business of judging was delegated to the State Council. Since that date it has possessed a power of decision of its own in matters of contention, and it has the power of passing sentence.

At its foundation, and theoretically the administrative jurisdiction undoubtedly represented a privilege which has been procured to the advantage of the administration, but in practice the final result has been completely different. Considering the matter without prejudice, one must recognise that countries which have no administrative jurisdiction have also but little administrative justice. Ordinary judges are loath to exercise a control which may be interpreted as an incursion and usurpation ; administrative jurisdiction, on the contrary, being a part of the administration, proves much bolder in compelling it to respect the law. In fact, only in countries which possess an administrative jurisdiction is there a really practical organisation of public administrative responsibility. Above all, in no other country than France are the acts of authority subject to control on the score of legality, a control which is extended by the State Council in its new capacity so far as to examine even the intentions of administrators. In fact the State Council is the great protector of the rights, property and liberty of the individual against the administration.

We have now to consider this body in greater detail.

Just as the Court of Cassation stands at the head of the whole legal order, so the State Council dominates over the administrative jurisdiction : but the comparison between these two great authorities must end there ; for while the State Council certainly acts at times as a court

of cassation or supreme court of appeal, it also acts as an ordinary appeal court, and especially as a primary court of common pleas in all matters where the administration is concerned.

The State Council acts as a supreme court of appeal for administrative jurisdictions whose competence is limited to a certain definite class of affairs, such as, for instance, the medical examination boards for enlistment in the army, and the Court of Accounts. The decisions of these courts are final in point of fact, but are subject to the control of the State Council in point of law.

The Court of Accounts was founded in 1808 to audit the accounts of officials who have the actual management of public funds. It is composed of a first president and procurator general with salaries of 30,000 francs per annum ; three presidents of Chambers with salaries of 25,000 francs ; an advocate general and senior councillors with salaries of 18,000 francs ; consulting councillors who receive a combination of fixed salary, special fees, and a bonus, and finally auditors, appointed after competitive examination. Councillors are permanent, and wear the robe, an emblem of the magistracy. The Court is regarded as a legal body. These permanent judges are, however, subject in point of law to the control of the State Council, whose members are not permanent and are less well paid. Since there is only one Court of Accounts, when one of its decisions is quashed, the case has to come before the same court again.

In addition to its work of jurisdiction over accounts, the court plays a large part in financial politics. It assists Parliament in the preparation of the law of accounts, a solemn act by which Parliament acknowledges that the Government has satisfactorily carried out the budget as it was voted, but it is an act which democracy has adopted—it was different under the July Monarchy—amidst general indifference.

The Court presents annually a report on the state of finance to the President of the Republic, in a document which is of the greatest importance and instructiveness; moreover such a periodic examination has proved its scientific value to be no less than its practical utility.

The State Council also acts as a court of appeal from prefectorial councils.

Every department has its prefectorial council which acts as an administrative body. Out of 271 prefectorial councillors, eight at Paris draw a salary of 10,000 francs per annum; thirty-three receive 4,000 francs; ninety-six receive 3,000; and 129 have to content themselves with 2,000. They are obviously very poorly paid officials. At one time under the Second Empire prefectorial councils might be considered as nurseries of future administrators. To enter such a council was regarded as a stepping stone from which one advanced to a sub-prefecture, but it would be a big mistake to think so to-day. Prefectorial councils has become *cul de sacs* and their members must abandon all hope of advancement on entering them. A councillor has in fact no prospects and the salary of a badly paid manual worker. The post is accepted in order to acquire an appearance of gentility.

In principle this council is presided over by the prefect, who is the official most directly subject to governmental control, but since the law of June 21st, 1865, which created a vice-president of the prefect's council, this official actually presides over the council when acting as a law court. The task of the public ministry is entrusted to the general secretary of the prefecture who takes under these circumstances the title of governmental commissioner.

The competence of the prefectorial council is limited; it has to deal only with cases specially attributed to it by the laws, the most important of which was passed in the year VIII of the Revolution (1799). It is however a

common error to think that it is a primary court of common law, from which appeal can be made to the state council. This is to make an inexact analogy with the district tribunals. The prefect's council invariably judges "in first instance" and always with right of appeal whatever sums are concerned, for the public interest is considered to be at stake in every case in which the administration is a party. But the council does not deal with a case, even definitely of an administrative nature, if it does not belong to that class of cases expressly attributed to it by law.

Official statistics show that prefectorial councils judge some 300,000 cases every year. At first sight the figure is striking, but less so on examination. The vast majority of these cases (about 295,000) are to do with appeals against payment of direct taxes; but such appeals are first of all addressed to the administration of direct taxation itself, and under these conditions the sentence of the prefect's council becomes a more or less passive confirmation of the administration's decision. Moreover out of these 295,000 appellants barely 6,000 uphold their claims in court. There remain then but five thousand cases from which again must be subtracted two thousand offences committed on the highways. Indeed not the least surprising anomaly of this jurisdiction is its acting as a criminal court; it judges in this capacity all offences committed on highways, river and sea boards, harbours, etc. Lawyers protest against a jurisdiction which provides so few guarantees being allowed to pass sentence. Others express surprise that it should be necessary to gather together three prefectorial councillors, not to mention the presence of the governmental commissioner, and a possible appeal to the State Council, in order to impose a fine of five francs on a carter who has harnessed two horses and four oxen to his cart when the law only permits him five horses.

Although dealing in general with petty affairs the

prefectorial council is sometimes called upon to deal with affairs in which large sums are concerned, namely all those which are concerned with public works. Finally it acts as a judge of the validity of certain elections, notably of those for district and municipal councils. When one remembers that all prefectorial councillors are under the direct influence of the prefect one may guess what authority their decisions have in this matter.

From June 14th, 1872 to June 2nd, 1907, various governments put forward seven different plans for the abolition or at any rate the transformation of prefectorial councils. As departmental organs they will probably be abolished and become organs of the future "region"; the new jurisdictions will then be fewer, their members better paid, and they will have greater authority.

We are now to examine the work of the State Council as a primary court of common law.

Whenever a claim is made against a State public service or that of a department or commune, it must be brought before the State Council "in first and last instance" unless otherwise expressly provided for by law.

The internal organisation of this great body, whose important function as counsellor to the government and Parliament has already been dwelt upon, is adapted to its work of jurisdiction. There are sections for common and special pleas, and these in their turn are divided into sub-sections. This internal organisation is in process of being altered, but the public is little interested in it, considering all decisions as coming from the State Council.

In seeking causes for the hardihood of the State Council which has changed this instrument of authority into an organ of liberty, one must emphasise the very important place which youth occupies in this venerable body. The Court of Cassation is like the Council of Elders of the magistracy; among both seated and standing magistrates

anything from fifty to fifty-five is considered young. The voice of youth is certainly never heard there. The State Council on the other hand thanks to the competitive examination for auditors is continually receiving young blood. Auditors and Masters of Requests present their reports and are listened to without that spirit of bureaucratic routinism which is so common in administrative bodies. The eight governmental commissioners represent "maturity before it reaches old age." They are Masters of Requests appointed with a supplementary salary of 2,000 francs a year, to fulfil the duties of the public ministry when the council passes judgment. They are all equal and have no higher official over them to correspond to the procurator general. This absence of an order of seniority favours freedom of thought, action and initiative. Add that having usually though not necessarily passed a competitive examination they offer certain guarantees of personal worth, and one can understand the altogether exceptional influence which they have exerted upon administrative jurisprudence.

The whole spirit of this jurisprudence is indeed expressed in the saying of a famous sectional president. "The State is honest"; and being honest it must submit to the law. The State Council sees to it that it does so. An example is provided by the case of a viper catcher which occurred in February, 1903.

A general council promised a reward of 25 centimes for every viper killed and to this end opened a credit account of 200 francs, but this credit being exhausted, viper catchers claimed a reward for 2,473 snakes in addition. This the prefect refused. The State Council then stepped in and ordered the department to pay up. The vote of the general council was an offer, an agreement of sale, like a price ticket in a shop window. It was a good illustration of the fact that the State and its members must obey the law like anyone else.

The State must also pay for any damage it may do, just as a private individual. From this principle has developed the great and essentially French theory of the responsibility of public authority. It was the work of several governmental commissioners of exceptional character and energy, Romieu, Tardieu, Teissier. Logically it proceeds from the principles of democracy; public expenses must be equitably borne by all citizens; but if one man suffers more than the rest as a result of the working of public services or even from the exercise of authority this equity is destroyed; and it must therefore be restored by compensation. Moreover, responsibility develops a democracy since it permits citizens to discuss the actions of authority from a judicial standpoint; "if the police had taken proper precautions that firing gallery would not have caused those accidents at the fair, those benches would not have given way under the weight of spectators; if the sanitary inspectors had done their work properly those poisonings would never have taken place." In this way citizens are encouraged to survey and control the working of the public services.

The State Council controls the legality of administration in a general way by the right of annulment for "excess of power." This has proved a most effective instrument of control, and one of the most original institutions of French administrative law. Anyone, whether a person or limited company, French or foreign, if damaged by an illegal administrative decision, can appeal to the State Council for its annulment. Acts of Parliament alone are outside such control; all other authorities are subject to it in cases where they exceed even by the slightest fraction their right of issuing executive commands; such commands can be annulled whatever their nature, and however lofty their rank in the order of administrative acts; they comprise the deliberations of general or

municipal councils, by-laws of mayors or prefects, appointments or degradations in rank of non-commissioned officers by regimental commandants, ministerial decisions, decrees of the President of the Republic, and even regulations of public administration, that is decisions taken by the President of the Republic following a bill in Parliament, and upon the advice of the State Council itself. Thus there is literally no way by which a public authority can escape the rigorous surveillance of the State Council upon matters of dispute.

Moreover the control exercised with regard to legality over this vast domain is as thorough as it can be. Annulment may be pronounced for the breaking of any law or ruling, whatever the authority on which the law rests (*i.e.*, whether act or statute), and whatever the nature of its limitation, whether one of foundation, of competence or of form. The control of the State Council even concerns itself with the intentions of administrators, and examines whether they are in accord with the general duties of their office. Thus an action legal to all outward intent may yet be annulled by the State Council, if the authority responsible for the action has used his power for a purpose other than that for which it was intended.

For instance, the prefect may order a match factory to be closed—" because of insanitary conditions," he says—quite legally. The State Council finds out, however, that the real motive is to save the State from paying the legal compensation provided for in the match monopoly act, and accordingly annuls the decision ; or a mayor, again on the ground of unsanitary conditions, orders the closing of a cattle market ; the State Council divines that the intention of the mayor is to force dealers to go to the newly built municipal cattle market, and to conduct their business there ; other authorities make use of rights which the law has given them for personal interest, or moved

by political passion ; and in every case the State Council pronounces annulment where it finds a misuse or conversion of power. No judicial authority would venture to extend its investigations as far as this.

Annulment for excess of power ensures the regular working of the administration, which is therefore concerned in the development of this institution. It is the malcontents' safety valve ; but to conform with the principles of democracy this method of safeguarding citizens must be developed to their advantage ; consequently appeal against excess of power is very widely accessible, and the State Council endeavours to make it more so. Formalities and costs are reduced to a minimum ; the applicant deposits at the secretary's office of the Council a written request upon stamped paper, the cost of which will be returned to him if his appeal is admitted ; credit is given, the applicant only having to pay costs if his appeal fails, and even then the costs may not exceed eighty francs.

Before glancing through a sheaf of decisions, one can hardly imagine the infinite variety of cases brought before the State Council in this way, nor what a handy and at the same time efficient instrument it becomes in the hands of citizens. It protects landed property against encroachments which the administration might be tempted to make by way of extending the limits of public land. It defends commercial liberty against every kind of police abuse. In the hands either of the individuals concerned, or of unions of civil servants it becomes one of the principal weapons against favouritism and arbitrary choice in public offices of every class and rank. The famous writer, Pierre Loti a naval officer, was unjustly retired from service ; he got this decision annulled and re-entered the service with a higher rank than before. A corporal was reduced to the ranks, and had this degrading sentence annulled on the

score of illegal procedure. A prefect was dismissed on account of false evidence concerning his conduct during invasion; but his *dossier* was not communicated to him, and his dismissal was consequently annulled. An anti-clerical mayor became embroiled with his vicar with the result that there were complaints about the ringing of bells, the conduct of the vicar at burials, and so on; the vicar defended himself by this same method of appeal. It is therefore also a powerful remedy against excessive use of power by decentralised authorities. This great institution, like the responsibility of public authority is almost entirely a creation of jurisprudence. It provides the best defence against administrative jurisdiction.

While appeals to the State Council averaged no more than 1,253 yearly from 1872 to 1877, their average number has since more than trebled itself, reaching the figure of 4,275 for the years 1913 and 1914. Accordingly law-suits " in first instance " tend to accumulate, and administrative justice threatens to become as slow as that of the ordinary courts. On August 15th, 1917, more than seven thousand cases (7,125) were waiting their turn to be judged in the folders of the *Palais Royal.* The State Council is being snowed under. This extension of its activity into matters of legal dispute is partly explained by the impulse which democracy gives to State powers and functions; the more the State concerns itself with works, production and trade, the more administrative litigation will increase; but the greatest reason of all for this increase is to be found in the growing confidence of citizens in the firm justice of this great administrative tribunal, and in their matured conviction that *the State Council is the best judge against the State.*

The Court of Conflicts.

Since there are two orders of jurisdiction it is possible that disputes may arise between them. The question as to who will decide them is answered by "The Court of Conflicts."

Called upon to give a casting vote between the judicial order proper and the administrative jurisdiction, the composition of this court resembles that of a court of arbitration. It comprises the Minister of Justice, President, three State Councillors elected by their colleagues, three Councillors from the Court of Cassation similarly elected, and two members and two juniors elected by the foregoing. There is a public ministry composed of one commissioner chosen from among the Masters of Requests of the Council, and a second from the barristers of the Court of Cassation, also two juniors. The presidency of the Minister of Justice, however, obviously differentiates the court from a purely judicial one; it is objected that he but rarely fulfils this nominal office, only in fact to give a casting vote when the judges are equally divided, but it is to be noted that in the four cases in which he has intervened since 1872, he has in every case turned the balance in favour of the administrative jurisdiction.

The procedure of the Court of Conflicts has a governmental character; it protects the administrative jurisdiction from any incursions of the judicial order, but does not conversely protect the judicial order. When a case is brought before an ordinary tribunal which might come within the province of the administrative section, it is the prefect who invites the court to transfer the matter by a declaration of incompetence, and who himself transfers it if such a declaration be rejected, by an appeal to the Court of Conflicts. This court considers the appeal, and if it decides to quash it, proceedings are recommenced in the original court at the point where they left off.

A typical case dealt with in the Court of Conflicts is the action of an individual against an official; the prefect tries to shield the official by deciding that he is not guilty of any personal fault for which he would be answerable in the civil courts, but merely a breach of duty involving responsibility for administrative funds for which he must answer before the administrative jurisdiction.

The Court of Conflicts judges about half a dozen cases annually.

Political Justice.

In all modern constitutions political crimes have been removed from the province of the ordinary courts, first in the interest of the State, for fear that the ordinary tribunals might show themselves timid or hesitating when dealing with still powerful politicians, who would perhaps regain office; secondly, in the interest of the accused: a political crime does not inspire moral contempt, and therefore the court appointed to judge it must be allowed the greatest liberty for appreciation of motives, a liberty which the ordinary tribunals do not and cannot enjoy; thirdly, in the interest of the courts themselves, which must not be embroiled in the whirlpool of political passions.

In the practical carrying out of this principle by the charters of 1814 and 1830, France took English institutions as her models and confided the rôle of Supreme Court of political jurisdiction to the Senate. But while in the English and American democracies the House of Lords and the Senate are only empowered to judge by a decree of the second chamber, in France, the Senate may be empowered either by the Chamber of Deputies to try members of the Government, or by the Government itself to try political criminals.

Certain crimes are referred to the Supreme Court on account of the estate of the persons who commit them

(*ratione personæ*), others on account of their intrinsic character.

Crimes referred to political justice on account of their author include all those committed by members of the Government, and are proceeded against by the Chamber of Deputies; they fall into two categories. The first concerns the President of the Republic and all infringements of the law he may commit from petty offences to high treason.

The President of the Republic is irresponsible for all acts committed in the discharge of his official duties; to take an absurd case, if he sold a decoration he could not be proceeded against; but he could be proceeded against if he sold the country; since that would be high treason and could be judged only by the Senate. This irresponsibility is strictly confined to the acts of his office. If through carelessness, say by a shooting or motoring accident, the President of the Republic killed an individual, he would be answerable for manslaughter, but would still have a privilege of jurisdiction in that he could only be judged by the Senate.

The second category includes crimes committed by ministers in discharging official duties.

Such crimes are not necessarily referred to the Supreme Court; and indeed they belong in principle to the Assize Court; but the Chamber of Deputies can impeach a minister whom it considers guilty before the Senate. Under the Third Republic, one minister, M. Malvy, was so impeached before the Senate, and moreover condemned (August 6th, 1918); another minister guilty of corruption by the Panama Company was tried before the Assize Court (March 21st, 1893). The principle of this special jurisdiction of the Senate, laid down in Article 9 of the Law of February 24th, 1875, was finally established by the law of procedure of January 5th, 1918. In many ways this

law broke with tradition and hence with the Constitution which was founded on tradition; thus, it released the Chamber from the obligation of supporting the truth of an accusation it might make; the public minister or procurator general became an irremovable magistrate of the Court of Cassation, appointed at the beginning of each year by the vote of his colleagues. The Chamber merely reserved to itself the option of appointing commissioners to act in concert with this magistrate; moreover it forbore to exercise this option in the Malvy case.

Hence, every link between the Chamber which accuses and the Senate which judges is liable to be broken, and the former may reproach the latter for having misunderstood its intentions.

In a judgment given on August 6th, 1918, the Senate proclaimed its sovereignty, affirming that it was not bound by the law and could punish any fault which seemed criminal by the penalty which it considered most just even if not provided for by the law. Such a tenet is justifiable always provided that the Senate keeps within the limits of the bill of impeachment passed by the Chamber, so that condemnation may be felt to have all the weight of an Act of Parliament. The tenet has been traditionally recognised in France since the Charter of 1814, which was itself borrowed from the English ruling. Moreover it should be noted that if there were no such rule, it would have to be invented, for without it ministerial responsibility would be nothing more than a name.

Secondly, we have said that there are crimes which must come before the supreme court on account of their own intrinsic nature; they are committed by individuals, and are proceeded against by the Government. They include all attempts against the security of the State (Article 9, Law of February 24th, 1875; Article 12, Law of July 16th, 1875). In this case procedure is according

to the law of April 10th, 1889, a decree which empowered the Senate to act as a Supreme Court of Justice; the Government itself appoints the public prosecutor for each case. Under the Third Republic the Supreme Court has been summoned three times for this purpose; the three cases were those of (1) General Boulanger and accomplices, August, 1889; (2) Déroulède and accomplices, November, 1899; and (3) M. Joseph Caillaux, M. Loustalot, and M. Comby, decision being given on October 15th, 1918.

This power of the Senate to act as a criminal jurisdiction may be regretted, but not on the grounds that such an assembly is unfit to administer impartial justice. It is certainly as well fitted as the ordinary Assize Court, and obviously provides as many guarantees as any specially constituted jury. What may be justly criticised is the fact that it tends to obscure by party passions the great problem of the two chamber system. For instance, during the first years of the Third Republic the chief item in the programme of the radical party had been the abolition of the Senate. But the Senate shut its ears to the violent suggestions of a perverted public opinion; it persisted in condemning Boulanger and his accomplices, and acquired from this feat if not a new lease of popularity at least the momentary silence of its opponents. When, however, the same Senate condemned the minister Malvy, the parties of the extreme left took this condemnation as the signal for opening their new campaign.

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Chapter XI

FINANCE

The financial system of France has been affected by the modern spirit of democracy in two ways ; first, the whole management of public finance has been placed under the strict control of the nation's representatives ; and secondly, the same fundamental principles of justice on which democracy rests are observed, in the apportioning out of taxes among citizens.

The Nation's Representatives Control the General Management of Public Funds.

In point of time, the people have always demanded right of control over finance, before they have demanded right of control over legislation. Parliaments, indeed, originated in the people's need of protection against excessive taxation by their rulers.

One of the fundamental principles underlying modern liberty was then established, that taxes cannot be levied on citizens without the consent of their elected representatives. Already under the *ancien régime* such a principle was being sketched out ; it was definitely proclaimed in the Declaration of Rights ; " All citizens shall have the right to agree in person or by means of their representatives upon the necessity of public contributions, to consent to them of their own free will, to control their use, and to decide upon their distribution or assessment, their payment and duration."

But the question must be asked, can the government dispose as it likes of funds thus entrusted to it? Under the *ancien régime*, it could; and the peer Garnier attempted to revive the system in his report of April 27th, 1816. It was at this very period of the Restoration, however, and owing to the labours of the ministers Louis and Roy, that the establishment of this democratic principle produced a new result in financial matters; Parliament must not only authorise expenses but must vote them before discussing taxes, which indeed are only justified in so far as they are necessary for the needs of the State. Parliament must therefore examine those needs before consenting to the sacrifices necessary to meet them.

The foregoing principles vary greatly in importance according to the way in which they are applied. One might imagine that expenditure would be voted *en bloc* and revenue the same; in that case the government would be free to administer public funds as it pleased, and could, for example, transfer to the Ministry of War, sums which the Chambers had intended for the improvement of public education; the first Restoration Budgets were voted in this way. The system is known as one of *abonnement*, *i.e.*, one of general subscription.

The Law of March 25th, 1817, however, laid down a new principle, that of speciality, in the conduct of French public finance, one that befits a free country; credits, their amount once decided upon, are definitely allotted to certain fixed classes of expenditure, in such a way that the Government has no longer the right to spend for one class what has been allotted to another. Sums voted for the infantry cannot be spent on the artillery, those passed for secondary education cannot be transferred to elementary. In this way all transferences become illegal. Democratic progress has been accompanied by a steady increase in the number of classes for which special sums are voted,

so that governmental action tends to become more and more restricted. In 1817, the Chambers had to vote on seven ministries; in 1827 on fifty-two sections; in 1831 on 116 chapters; in 1872 on 338; in 1877 on 400; to-day there are more than a thousand (1,087 in 1900, 1,091 in 1911).

Once a year Parliament is called upon to draw up a draft of expenditure and revenue, which they authorise the Government to carry out during the coming year. This document must contain all expenses without exception; the rule that there should be a single and entirely comprehensive budget must be observed if regular and controlled finance is to be possible. Moreover, such revenue and expenditure are only authorised for one year. The principle of an annual budget is partly due to anxiety that the measures of a sound financial administration should not be prolonged to an indefinite future, but depends chiefly upon a political consideration; since the voting of the budget provides one of the most efficient means of parliamentary control. The Government's freedom of action would become immeasurably greater if it could obtain consent to taxation covering several years; this principle of *annualité* gives Parliament the power of refusing to pass the budget, an overwhelming means of control in the hands of a Parliament wishing to make itself master of the Government. The principle, which was laid down in the 1791 Constitution does not expressly appear in that of 1875; it is considered as belonging to the unwritten law of the Constitution.

If Parliament has not completed the budget by December 31st it must, at the risk of putting a complete stop to public life, vote budgets for one or two months; which are known as *provisionary twelfths*. Under the Third Republic this has happened more than twenty times; and in 1912 Parliament had to vote seven such twelfths.

The object of the annual law of accounts is to enable Parliament, who authorises revenue and expenditure, to determine whether her rulings have been complied with. The principle was laid down after the Revolution; but the Restoration Chambers first put it definitely into practice by the law of May 15th, 1818; they had some difficulty because of the very powerful control which it tended to give them over ministers. The *bourgeois* Chambers from 1814 to 1848 were indefatigable in examining the accounts of ministers; their most brilliant orators took part in searching debates which produced the greater number of the excellent regulations still governing French public accounts. The democratic Chambers have evidently very much less of that spirit of order and economy.

1. Laws of accounts are passed amid general indifference, often during the morning sittings, and in 1889 and 1914 (April 3rd), with the sole comments from members that "the House is somewhat thin," or that "it is pitiable to see less than fifty deputies present to examine this bill."

2. They are voted in lots and without debate. At the opening of a sitting on May 25th, 1891, the Senate declared three *exercices* to be in order (the *exercice* is the period of execution of the budget, comprising one year and a few months grace); on March 23rd of the same year, and in a few months, the Chamber passed four. On April 3rd, 1914, during a morning's sitting the two laws declaring the *exercices* of 1910 and 1911 to be in order were hurriedly voted without debate; yet these *exercices* represented expenses incurred totalling in all nearly nine milliards of francs; 8,869,834,350 francs, or £354,793,374.

3. They are voted after an unprecedented period of delay, eight, nine, ten, and even eleven years afterwards—it is a striking example of an excellent institution with perfect regulations failing simply by the fault of men.

Equality of Sacrifices demanded from Citizens.

Governments, whatever their nature, endeavour to realise two aims in taxation, which are not entirely independent of one another; namely, productiveness and justice. But according to the dominating political tendency, either one or the other of these two aims is put foremost. Under a bourgeois *régime*, the legislator moved by financial considerations will demand above all else a fiscal system which extracts the maximum of money with the minimum of appreciable hardship for the taxpayer, so as to avoid such outbreaks of discontent as disturb the even tenor of the governing classes.

Indirect Taxation.

Indirect taxes flourish under a system of *fiscal anæsthesia*. They are paid in the act of consuming, circulating, or transferring wealth. Taxes on commodities have the advantage that the taxpayer pays them without noticing very clearly that the tax is added to the price of the article. Their disadvantage is that they are essentially unfair, weighing heavily upon the poor who are obliged to consume as many taxed articles as the rich. Accordingly democracy tends to reduce taxes on commodities, contrary to what took place under the Restoration. Unfortunately they cannot be done away with altogether, since indirect revenue (apart from registration duties, customs tariffs, and inherited property duties) amounted in 1913 to nearly one and a half milliard francs, or £59,042,084. They could not be abolished without making a hole in the budget, which it would be impossible to fill up.

Democratic fiscal systems are more ready to strike heavily at inheritances. At the present moment the tax on the assets of an estate increases according to the value of the estate, and the distance of the relationship between the original owner and the inheritor, *i.e.*, it is progressive.

Inherited property duties (*droits de mutation par deces*), combined with the *taxe progressive* (which affects the estate of any individual leaving less than four children living) may rise to as much as 60 per cent. on assets exceeding fifty million francs; on a moderate inheritance the tax on the sum between fifty and a hundred thousand francs may be as high as 36 per cent. Such a proportion could hardly be increased without practically abolishing inheriances altogether.

Appeals against indirect taxes may be brought very easily before the proper judicial authority, usually before the district court, exceptionally before the Justice of the Peace.

Direct Taxation.

Democracies tend very properly to favour a system of direct taxation, which endeavours to reach the taxpayer through his income, *i.e.*, through his capacity to pay. The laws of July 15th, 1914, and July 31st, 1917, inaugurated a fiscal system in which such democratic principles triumphed. There are now six taxes directly levied on various classes of income, and in addition a super-tax levied on gross income.

1. A tax of 4½ per cent. on industrial and commercial profits;

2. A tax of 3¾ per cent. on profits from agricultural schemes;

3. A tax of 3¾ per cent. on public and private salaries, remunerations, emoluments, fees, pensions, and life annuities;

4. A tax of 3¾ per cent. on profits from non-commercial professions;

5. A tax on revenues from credits, deeds of property, credits by mortgage or by note of hand, deposits, securities. . . . (Laws of March 29th, 1914, December 30th, 1916, July 31st, 1917);

6. A land tax of 5 per cent. on revenue from property whether built upon or not ;

7. A general tax of a maximum of 12½ per cent. on gross income—this maximum figure applies only to incomes, rare in France, of over 150,000 francs a year ; smaller incomes pay proportionately less.

Several points in this new legislation should be noted.

1. *Fiscal Justice* is aimed at, and as far as possible everyone is taxed according to his capacity to pay.

2. The "*indiciaire*" system has been abandoned. The legislator tries to tax the real income, and no longer takes account of exterior signs (hence the word " indiciaire ") such as the rent of the house, which resulted in hardship on large families ; to arrive at the exact income of the taxpayer the legislator demands a *controlled declaration* from the taxpayer, sometimes known as a *third party declaration* (the third party being the employer for salaried persons).

3. *The Tax is Personal.* Under the Revolution system the tax was levied on things—it was real ; henceforth the individual himself must be taxed so that his sacrifice may accord with his economic position.

4. *Classification of Revenue.* The capacities of citizens to pay are now individually considered in such a way that it is possible to tax unearned incomes more heavily than earned incomes.

5. *Taxes are Progressive.* The taxes that we have mentioned have been given at their maximum ; the law provides complete exemption for the smallest incomes, and partial exemption for larger ones, exemption decreasing as the income increases.

6. *Rebates for Families.* One of the injustices of the old fiscal system was that it spared the bachelor, and bore heavily on the head of the family, who was obliged to pay taxes on commodities which were necessarily numerous

on account of his numerous children, and an inhabited house tax again large since he had a large family to shelter. On the new taxes, however, established by the Law of July 3rd, 1917, on the land tax and on the general income tax, the taxpayer can claim a rebate, which varies from 5 per cent. for one person dependent upon him to a maximum of 50 per cent.

The taxpayer still enjoys very valuable guarantees against illegal exactions on the part of the administration ; they comprise (1) oral appeal at the town hall before a controller of taxes, and (2) proceedings before the prefect's council, with appeal to the State Council, the only formality required being a stamped application, and that is only necessary if the sum concerned exceeds twenty-five shillings.

Such a system may cause at its start friction and discontent ; even evasions and mistakes. It can perhaps be criticised from the point of view of its economic effects ; yet one cannot but admire the regard for justice with which it is imbued.

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Chapter XII

PUBLIC RIGHTS

France is the country of the "Declaration of the Rights of Man and of the Citizen." No one, however, will maintain that the members of the Constituent Assembly carried out to their fullest extent the noble ideals formulated in that famous document, and there is perhaps a certain amount of truth in the studiously disparaging work of a German writer, Jellinek, who tries to trace every paragraph of it and every section of a paragraph to an American, Lutheran, or Calvinistic idea, Men of any one age cannot wholly detach themselves from the ideas, endeavours, and productions of those who went before them. Consciously or unconsciously all artists and thinkers profit from the toils by which their predecessors enriched the language, the intellectual heritage of mankind. The nameless sculptor who fashioned in marble the perfect beauty of the Venus de Milo was evidently an imitator; his work would have been very different if he had toiled at it in a cave during the stone age. Molière, Chateaubriand, Victor Hugo—all expressed the ideas of their own age in a language which had been moulded by other lips before them; they added something personal which was their genius; similarly the Declaration of Rights is the work of the French genius. We are going to examine how far those principles which have been proclaimed to the world are put into practice in France itself: but we shall only speak here of the "cardinal liberties."

The Freedom of the Press

The freedom of the press must come first of all public rights, since there can be no true democracy without guidance of public opinion and no guidance of public opinion without freedom of the press. The law of July 29th, 1881, is still to-day the charter of the French press, and we may here indicate its most salient points.

The written expression of thought is not subject to any conditions which cannot be very easily satisfied. Printing, publishing, retailing and placarding are under no restrictions whatever. All publications other than periodicals must comply with no more than two very simple rules. They must bear the name of the printer, and two copies must be deposited on the national files. The rules are hardly stricter for the periodical press, which is evidently more important from the political point of view. When the journal is founded a simple declaration must be made of the name of the editor responsible, and on the publication of each number two copies signed by the editor must be deposited. There is no governmental interference in the life of the journal. No authority, not even a judicial one, can suspend or suppress publication.

The criminal charge, known as the "crime of opinion" (*délit d'opinion*) has now been abolished, and consequently expressions of opinion can no longer be punished; attacks upon the country, the Republic, the Constitution are permitted; the expression of monarchist ideas is not forbidden, and one can maintain atheistic or religious doctrines as one pleases; pornographical subjects alone are not entirely free. Naturally such freedom is limited by the rights of others; diffamation, calumny and insult are illicit. But even in these cases no preventive measures can be taken; so that it may be said that one is free to insult or libel anybody on condition that one then suffers

the penalty of the courts. On the contrary where it is a case of outrage on manners preventive measures can be taken. It is not illegal to give false news. The authors can only be punished if the publication was not *bona fide* and resulted in public disturbance ; but this charge of giving false news is never preferred.

The competence of a jury to decide charges brought against the press has been disputed. In principle such infringements of the law committed by the press must be brought before the Assize Court in the presence of a jury. The freedom of the press is the same thing as freedom of opinion, and in order to judge whether such freedom has been abused the court must directly represent that opinion. Actually, decisions returned by juries in actions against the press are often absurd. Two classes of proceedings, however, still remain within the jurisdiction of the criminal courts, namely for defamation of character, and (in 1854, designated by their opponents as the "infamous laws") for anarchist sedition.

The true counterpart of liberty is responsibility ; but the law of 1881 does not make any serious attempt to establish such a responsibility. The law considers the editor as the person chiefly responsible for infringements ; but the editor is often merely a "man-of-straw," totally insolvent. Then again the courts are extraordinarily lenient in the penalties and damages they impose for crimes committed by the press, so that the scandal caused by taking the affair into court costs more than any damages obtained. Indeed certain campaigns obviously defamatory cannot be stopped by legal means. It was on account of this that the League of the Rights of Man started a campaign for the suppression of libel. It is sometimes demanded that fictitious proprietorship should be made illegal and that the proprietor of the journal should always be responsible for offences committed by it. Others

would impose a particular form upon journal property; would forbid, for instance, the formation of anonymous or joint stock companies and would only permit forms where the identity of the individual proprietor was clearly apparent; *i.e.*, either individual proprietorship or a company formed under a collective name.

Still others demand that the author of a libel which cannot be proved should automatically reap the full penalty of the law. The suggestion has even been made that the jury should be dispensed with. Others desire that new libel charges should be formulated, especially following England's example, to present any law suit being discussed while in progress . . . and so on. There is no doubt that the punishment of libel crimes has become in many cases almost impossible and always ridiculous. Nevertheless, although freedom has thus like bondage its disadvantages, it would perhaps be unwise to meddle with the great charter of 1881, which provides for the expression of opinion in France the most liberal system in the world.

Freedom of Assembly.

The right of assemply to hear speeches or for the exchange of ideas is not subject to any kind of condition or previous formality. "Public assemblies, for any object" declared the law of March 26th, 1907, "may be held without previous notice." The law of June 30th, 1881, had declared assemblies legal provided notice of them were given twenty four hours in advance. Immediately after the disestablishment of the Church, both Government and Parliament claimed that this act included religious meetings; the Catholic Church demurred, upon which Parliament in a generous frame of mind abolished the necessity for previous notice, so that the meetings of the "faithful" remained legal. The other provisions of the

law of 1881 remain in force, especially those which concern the prohibition of open air meetings.

Freedom of Association.

The "association" is a permanent grouping of individuals who are joining their efforts in a common and disinterested aim. When their aim is not disinterested, *i.e.*, when the group proposes to divide profits, it is known as a "society" and is regulated by the commercial and civil courts. Such disinterested or non-commercial groups can acquire sufficient power to cause governmental authority grave anxiety; that is why despotic *régimes* have always distrusted them. During the whole of the nineteenth century article 291 of the criminal code remained in force in France, forbidding freedom of association; so that associations of more than twenty persons could only be formed with the authorisation of the Government. The Third Republic began by legalising certain associations with definite purposes; associations to run a school of higher education (Law of 1875), professional syndicates (Law of 1884), mutual aid societies. But the freedom of association was not really proclaimed as a principle until the law of July 1st, 1901.

Nowadays associations may be formed without any condition or formality, and may comprise any number of members. Only those associations are forbidden which are founded for an illicit purpose, contrary to the law and the well-being of society, or which aim at diminishing the national territory or attacking the republican form of Government.

Groups so formed are not illicit even if the Government be not informed of their existence, in the sense that their members cannot be proceeded against. But they cannot possess nor acquire wealth, nor can they plead in a court of law; they have no "civil personality."

The law of 1901 allows associations to acquire a certain limited standing (*petite personnalité*) by a simple declaration of their existence. Declared associations can then plead in a court of law, can acquire under title deed, and possess apart from administrative grants both : (1) shares, whose redemption price must not exceed the sum of 500 francs ; (2) the premises and effects strictly necessary for the carrying on of the association ; declared associations cannot therefore receive bequests.

Associations of recognised public utility alone enjoy a full civil standing (*pleine personnalité*). Here it is no longer a question of liberty but simply of administrative favour. The head of the State by a decree of the State Council, is entirely free to confer " civil personality " on any association which he thinks worthy of it. The advantage of such recognition is the right to receive bequests ; but even recognised associations are subject to a restriction which originates in the traditional fear of mortmain ; they may still only possess effects strictly necessary for their existence ; they may not possess property from which to draw revenue. If such is bequeathed to them they are forced to sell it, and invest the money so gained under *titres nominatifs* (that is to say, in bonds where the name of the real holder is clearly apparent).

This law of July 1st, 1901, was certainly very liberal in tendency ; but it was not perhaps passed in a spirit of liberty. At that period of impassioned strife it was less a question of ensuring liberty to ordinary associations than of suppressing the religious congregations which had formed in consequence of governmental tolerance and generous laws. Religious congregations (a term which the law forbore to define) were not to be formed without the authorisation of the two Chambers of Parliament. In obedience to this law sixty congregations demanded authorisation. Their demands were refused

en bloc. Waldeck-Rousseau who was responsible for the law of 1901 reproached the Combes Government which succeeded him "for having gradually changed a law of control into a law of exclusion."

Liberty in Education.

Freedom of instruction may well appear more important than the freedom of the press, since education acts upon young and hence impressionable minds devoid of a critical faculty, and may endow them with a bias that will last all their lives. The struggles to obtain this liberty have consequently been exceptionally fierce.

Freedom of primary instruction was established by the law of June 28th, 1833; the law of March 15th, 1850 (the *loi Falloux*) established the freedom of secondary education; finally the law of July 12th, 1875, inaugurated the freedom of higher education.

Liberty in education would seem to be complete in France were it not for the important restrictions laid down by the laws of July 1st, 1901 (Article 11) and July 7th, 1904. Members of religious congregations whether authorised or not were forbidden to teach. These laws had the effect of closing the convents where a great number of young French girls were brought up; the nuns were expelled, and their effects sold up; the boarding schools were also closed where the "brethren" gave a superior elementary education to children of the lower middle classes. People who were known to have vicious tendencies or immoral convictions were also forbidden to teach. Rulers of a state, under whatever title, are naturally too much inclined to bear with impatience the liberty of others.

Liberty of Religion.

Liberty of creed is the right to practise openly the ritual of the religion to which one belongs. During the

whole of the nineteenth century such freedom was restricted under the system of collaboration between Church and State which had been established by the Concordat of 16 messidor, year ix., and the law of 18 germinal, year x.; ministers of religion were paid out of public funds, and were treated like public officials: in exchange the Government reserved to itself the right of exercising a rigorous control on their appointment.

The law of December 9th, 1905, substituted for this system of collaboration one of separation, proclaiming at the same time the liberty of creed. It claimed also to organise such a liberty. Religious associations were to be formed to receive the goods of the suppressed ecclesiastical foundations, and to take over their sacred buildings, with the obligation of keeping them in good repair. The Catholic Church considered these associations to be contrary to its order and forbade their formation. This obstinacy lost the Church all its property. The law of January 2nd, 1907, endeavoured to introduce a legal ruling to allow public religious services; the right to hold such services could be granted either to religious associations or to ministers of religion. But the Pope forbade the latter to apply for this right; and consequently the obstinacy of the Church made the separation still greater than the law had intended.

We have thus come to a *de facto régime* which gives rise to a certain number of judicial difficulties. On the surface nothing in the life of religion has changed: the same ceremonies take place in the same churches, and are celebrated by the same ministers: the vicar seems to be as formerly master in his own church: he takes collections, levies his surplice fees, makes a charge for benches and seats. As far as the public is concerned nothing has changed.

On examination, it will be found that the present system depends upon two principles: first, that religion is not

recognised; and secondly that it is free. Religion is no longer a public service; its ministers are no longer salaried officials, with a rank in the State. But although religion is not "recognised" in the particular sense of the word as used under the Concordat *régime*, it would not be correct to say that the State "ignores" it, or that it regards religion as a strictly personal affair, concerned with the intimate relations between every individual and the Deity: and this for two reasons.

The State does not ignore religion since it takes measures against it: ministers of religion are forced to practise a greater reserve in speaking than ordinary citizens: they may not give religious instruction during school hours. A commune may not endow a religious denomination as it does a choral society or a gymnasium club.

Secondly, the State does not ignore religion, since it favours it. Religious buildings do not belong to any particular group of citizens pretending to worship in any special way, but to the religion previously "recognised" in the Concordat sense of the word, and it is in this sense that religion continues to be recognised. The French State accepts the "fact" of the Church and its hierarchy: for the first time the "faithful," whom the State Council allows to plead in its court, are recognised in such a judicial capacity; above them there are the ministers of religion who are only considered as such if they are "in communion" with the bishop, who in his turn must be in communion with the Pope. The fact of this hierarchy and the fact of decisions taken in this hierarchy, either to appoint, dismiss, or replace ministers of religion, are taken into account by the courts, both judicial and administrative, according to a very interesting system of jurisprudence. The rule that no religious body shall be paid by the State has one exception, that of army chaplains, who receive officers' pay.

The second important point is that religion is free. Former religious buildings are still affected by the law in a very special manner. They are the property of the communes, but a property legally limited by this special application of the law. While the communes *may* repair them, they are not bound to do so, even if the "faithful" volunteer to pay for the cost of repairs, and they can even prevent the "faithful" from doing the repairs themselves.

Actually, in the immense majority of the communes the former mortgage on the vicarage is still in force, and the vicar is obliged to pay rent to the commune, the amount being approved by the Prefect. Communes would not be permitted to allow the vicar to inhabit the parsonage for nothing or for a nominal rent: that would constitute an illegal grant to a religious body.

Religious ceremonies are free. The principle of religious liberty, which was threatened by the law of 1905 is very widely interpreted by the courts: police regulations are subject to the control of the criminal courts, who before passing sentence on the guilty party must satisfy themselves that the regulations are not illegal, and do not violate the liberty of religion. Moreover, the people concerned whether church members or priests, can appeal directly to the State Council for the annulment of regulations restricting their liberty on the ground of "excess of power." This control of the State Council is beneficial, since it suppresses that abuse and misuse of power of which the ordinary courts take no cognisance. A study of this jurisprudence will show that freedom is more surely and efficiently maintained by the State Council than by the Court of Cassation. The State Council is quick to condemn all busybodying tendencies on the part of mayors, rare as such cases are; when the civil power tries to obtain, for instance, the use of the bells for other than religious purposes and unsupported by any tradition older than 1905; or lays

down regulations inspired solely by so-called philosophical considerations and not by any legitimate regard for the public peace, concerning funeral processions, cemetery rites, and so on.

Finally, religion is free in its organisation. The Church is infinitely freer than it was under the Concordat *régime*. The government no longer has any influence on the choice of bishops; it no longer gives its approval to the appointment of vicars; it can no longer exercise a hold on priests by stopping their salary; it can no longer censure the actions of an ecclesiastical dignitary; it can no longer hinder the publication of Papal bulls in France; bishops can now assemble when and where they like. Some have regretted the influence which the State wielded over the Church under the Concordat *régime*; but certainly it made for social peace and the well-being of the country, and by contrast the law of 1905 has favoured ultramontanism.

It will be seen that French common law constitutes a magnificent monument of liberty. It still exhibits here and there certain regrettable defects. Republicans will have to renounce that laborious ideal of what they claim to be a moral unity enforced by the Government, which was the unrealised dream of Napoelon. The war has shown that France in all her diversity is magnificently one. "True unity," wrote Montesquieu in his *Considérations sur les causes de la grandeur des Romains* (Chap. IX.), "is a harmonious unity in which all parties however opposed they may seem to us, contribute to the general good of society, just as discords in music contribute to the harmony of the whole."

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CONCLUSION

FROM this rapid sketch of French institutions it is easy to see that they contain many parts which are defective, outworn and decrepit. Several times during the Great War the highest authorities in Parliament and the Government declared that now at last the question of revision of the Constitution was open to consideration. Very probably after such a tremendous crisis the country will turn itself to a general remoulding of its institutions as a means of ensuring its reconstruction. It is both probable and desirable. However, one must neither be too pessimistic about the existing state of things, nor too optimistic about the future.

Desire for reform is so strong that injustice is done to existing French institutions. "Nothing in them is perfect," we can say, "but all holds together, is braced up, is interdependent, . . ." One almost forgets the great things that these institutions have brought to pass. Let us consider the state of France at the beginning and at the end of that important period in French history which elapsed between the two wars with Germany. At the fall of the Empire, France was left vanquished, her territory diminished, and herself terribly weakened; she was torn by faction and party strife; the ruins of the Commune were still smoking. Conservatives were divided in allegiance to three pretenders, and Republicans in their allegiance to various conceptions of the Republic. France had to suffer the humiliation of standing helpless while Bismarck interfered in the elections, and prevented Gambetta from proclaiming former officials

under the Empire ineligible. Those nations who neither hated nor threatened, regarded her with a melancholy sympathy and pity.

However the world was to witness a display of noble and vigorous energy. The French nation healed itself of its wounds, restored the balance of its financial system which Bismarck thought to have definitely broken when he demanded such a crushing indemnity; it offered its gold freely to forward the work of liberation; it got rid of the last remnants of the army of occupation; it improved its administration, and reorganised its military force. At the same time it re-established its economic system, which proved its vitality by huge universal exhibitions and grandiose plans for public work. By this labour of patient and energetic reconstruction France again became a power in Europe. Moreover, the French genius was not slow to adopt those means of action suited to the lofty rôle that its traditions called upon it to play. It was then that France could set herself to the magnificent work which will ever remain an honour to French diplomacy, the liberation and reconstruction of Europe in the face of a threatening pan-Germanism. And when the threat was at last realised by the most criminal attack in history, it was France who was to be found at the head of the military opposition, and until the entry of the United States into the war, at the head of the political strategy of the free nations.

"By their fruits ye shall know them." Institutions which have given such results deserve something better than disdain.

They must be altered, adapted, and perhaps re-fashioned, but it would be madness to overthrow them. Every reform opens a profit and loss account; and reformers only consider the profits column when they picture their ideal institutions founded upon principles of pure

reason; but experience, cruelly at times, forces their attention upon the column of losses. In any case France must not forget to respect, as she has done amidst greater political upheavals, the great law of the continuity of history.

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